

The Voice, *The Official Newsletter of SNA*

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Welcome!

You are reading *The Voice*, a newsletter published by The Special Needs Alliance. Our purpose is to provide information--and answers--about special needs planning for family members and professionals. We hope this newsletter helps you. We invite your questions, suggestions and comments (please understand that we cannot give individualized legal advice on the basis of an e-mail inquiry). We also encourage you to forward our newsletter to others who might benefit from the information here, or who might have similar questions.

A Reader's Question About Pooled Trusts



The Executive Director of a pooled trust in Virginia responded to our recent article on pooled trusts. She observed that our article recommended the use of pooled trusts for smaller amounts of money -- we specifically suggested \$50,000 or less -- and went on to say that she believes that ". . .Pooled Trusts offer advantages for both smaller and larger trusts. The advantages are: funds are pooled for investment purposes providing a greater opportunity for growth; staff are experienced Trustees and are knowledgeable about the rules regarding public benefits such as SSI and Medicaid; reports are made to public agencies regarding the Trust and disbursements; a Board of Directors, comprised of professionals with expertise in various relevant areas, oversees the operation of the organization; a nonprofit organization will continue in perpetuity; disbursements are prompt; and staff are sensitive to the needs of people with disabilities."

We agree that all of those benefits strongly support consideration of a pooled trust in most cases. Pooled trusts typically offer a staff with sensitivity to special needs and familiarity with the benefits issues of persons with disabilities. That can be very difficult to replicate with either a family member or a professional trustee (such as a

bank or trust company). A pooled trust typically can provide trust management at a lower cost than other professional trustees due to the pooling of accounts and the magic of "non-profit" involvement.

So what is the right size to consider the use of a pooled trust? Perhaps focusing on the amount of money in the trust is the wrong question.

Many members of the Special Needs Alliance were instrumental in starting pooled trusts in their communities, and most of those trusts now operating across the country have active involvement of Alliance members. In most cases, one of the principal concepts the organizers of those trusts had from the inception was to provide an option for people who needed such a trust but did not have access to a trustee. That limited access is usually because there is not a family member available (or no family member with the necessary investment and trust accounting experience) and the amount of assets is too small to interest a professional trustee.

Now that pooled trusts are part of the everyday special needs landscape, we often find that individuals and families are using the pooled trust for all kinds of reasons unrelated to size. Perhaps it is attractive to have a trustee who operates right in the area where the beneficiary lives, or it is helpful to have a trustee who is not personally and emotionally involved with the beneficiary. It is never any fun for a family member to have to say "no" in a money situation. Many of our clients choose a pooled trust simply because they do not believe that any normal human is capable of learning and keeping up with all of the rules of special needs trusts and government benefits.

So why would you ever **not** choose a pooled trust? Many of our clients with special needs do have a family member or friend who can fill the role of trustee very well and at little or no cost -- though we often caution that family members, no matter how well-intentioned and inexpensive -- are often not the best choice. Some pooled trusts may have restrictions on types of investments that can be used, or require that the participants choose a particular asset allocation model or investment mix. Few pooled trusts are able to accept assets such as real estate

into their trusts. If the trust is large or has complex assets such as real estate or limited partnerships, one can often better customize the asset management with an individual trust.

One other problem with pooled trusts is a little more difficult to explain, and does not apply in every case. Because most pooled trusts were established so that any unused trust balance reverts to charitable purposes on the death of the beneficiary, the use of a pooled trust may (depending on the precise terms of the trust and circumstances) prevent the distribution of trust residue to heirs of the beneficiary. Of course, most stand-alone trusts funded with personal injury proceeds or other assets originally belonging to the beneficiary provide for repayment of state Medicaid expenses, which may consume the trust without leaving anything for family members. This limitation of pooled trusts therefore mostly applies to large trusts or beneficiaries who happen to live only a short time after establishment of the trust.

Pooled trusts also vary greatly in what they can offer in the way of service, prompt disbursements, and "perpetuity" of the sponsoring nonprofit organization. Some excel in all of these and some do not. There is tremendous geographic variability, as well, with some states having no local pooled trust options at all. As with so many things (and especially things as complicated and individualized as special needs trusts), one needs to investigate, and to determine which option best addresses the individual needs of each beneficiary.

About the Author: [Kelly A. Thompson](#) is an attorney in Arlington, Virginia, and a member of the Special Needs Alliance. She knows what she is talking about on the subject of pooled trusts: she serves as counsel for the [Personal Support Trusts](#), a pooled trust managed by [The Arc of Northern Virginia](#).

About this Newsletter: We hope you find this newsletter useful and informative, but it is not the same as legal counsel. A free newsletter is ultimately worth everything it costs you; you rely on it at your own risk. Good legal advice includes a review of all of the facts of your situation, including many that may at first blush seem to



you not to matter. The plan it generates is sensitive to your goals and wishes while taking into account a whole panoply of laws, rules and practices, many not published. That is what The Special Needs Alliance is all about. Contact information for a member in your state may be obtained by calling toll-free (877) 572-8472, or by visiting www.specialneedsalliance.com.