



When Can Trust Funds Be Used to Modify a Home That the Trust Doesn't Own?

It is often necessary to modify a home in one way or another to accommodate a person with special needs. But if the individual is the beneficiary of a special needs trust (SNT) and trust funds might be used to pay for modifications or repairs to a home that the beneficiary doesn't own, things can get complicated.

Depending on the type of work to be done to the home and who else it will benefit, the work could violate the trust's terms and jeopardize the SNT beneficiary's receipt of government benefits like Medicaid and Supplemental Security Income (SSI). While nothing should be undertaken without guidance from your special needs planner, here is a general outline of the risks and some possible solutions for trustees considering using trust assets for home modifications.

Home modifications that will be funded by a "third-party" SNT are less of a danger area. With these types of trusts, the trust language controls what payments can be made, and there should be no effect on Medicaid or SSI as long as the trust's terms are respected. This is not necessarily the case with "first-party" SNTs, which require that the trust's funds be used for the "sole benefit" of the beneficiary.

Modifications that help only the beneficiary, that are inexpensive, and that add little value to the home likely won't run afoul of the sole benefit rule. For example, adding a ramp or widening doorways and hallways to accommodate a wheelchair are for the beneficiary's sole benefit, are relatively low cost, and might be easily paid for by the trust.

Less clear-cut are modifications that the trustee is asked to fund that may also benefit others, are more expensive, or add substantial value to a home. Think, for example, of a pool or sauna to provide doctor-recommended therapy for the beneficiary. These aid the beneficiary but the benefit may extend to the property owner by adding value to the home and other residents who might enjoy the pool or sauna. Large-scale repairs such as a new roof or improved water supply, modifications that will certainly benefit the beneficiary but will just as certainly profit the property owner and others living in the home, are even murkier for a trustee.

Modifications and repairs that are further away from the "sole benefit" end of the spectrum are not automatically excluded because they confer a benefit on others or are expensive, but great care is required. In such cases, where possible and when there is a compelling benefit to the

beneficiary, the trustee might pursue a co-ownership interest or life-estate in the home, or an occupancy agreement that requires the owners to provide housing to the beneficiary well into the future. Or the distribution from the trust might be treated as simply a loan with a secured interest.

If you hope to pay for special needs modifications or repairs from an SNT, you should know exactly what changes you want to make and why they are necessary, and then meet with your special needs planner to figure out how you might achieve your goals while protecting the trust's beneficiary.

For more information about special needs planning in general and special needs trusts in particular, contact Attorney John D'Onofrio today.

As a member of the Academy of Special Needs Planning, John is constantly reviewing new laws and amendments in this area of law as well as attending seminars and continuing education classes relevant to special needs planning and trusts.

Call today to schedule a free initial consultation. Call today, get peace of mind today.

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