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for more information about estate planning strategies as well as additional information about other services provided by our firm.

## COURT-ORDERED SPECIAL NEEDS TRUSTS

Most planners are familiar with the use of special needs trusts (SNTs) as strategies to provide for disabled beneficiaries. However, many planners have limited knowledge of the use of court-ordered SNTs and are missing the opportunity to benefit their clients. Many persons experience disabilities as a result of accidents, which give rise to legal claims resulting in settlements or judgments. Receipt of such payments, over and above very limited exemption levels, will disqualify even the most severely disabled person from a wide variety of government assistance programs and services. Many of those services are difficult, if not impossible, to purchase outside of the government programs. For that reason, SNTs are often used to receive and manage negotiated settlements and judgment awards. In addition, federal law authorizes courts to direct to SNTs inheritances and assets already owned by a person who becomes disabled.

Traditionally, two "control" options are available for managing assets of an incapacitated individual. These options are either a guardianship (including conservatorship) or a trust. When a guardianship is chosen, legal title of guardianship assets remains with the disabled person (the "ward") even though the assets are subject to court control and management by the guardian. Regular financial reports must be made to the court, generating attorneys' fees, costs and in many cases accountant's and other fees. Court authority must be obtained for all expenditures and investment changes. Courts may restrict investment activity to only the most conservative options. The guardian may be required to post a bond at the expense of the guardianship estate. Since the assets technically belong to the ward, they are by definition "available" to him or her for purposes of benefit eligibility determinations. Therefore, the assets of the

guardianship may disqualify the beneficiary from participating in government assistance programs.

But assets held in SNTs belong to the trust, not to the beneficiary. To avoid having trust assets counted as "available" to the beneficiary, as the trust is structured so that the beneficiary technically has no ownership interest in the trust.

A trust arrangement will result in some ongoing Trustee's fees and initial startup costs, but the Trustee will generally have authority to make all investment and spending decisions without the time and expense of seeking court approval.

Larry Bray spends a large amount of his practice helping families with disabled, or handicapped, children in structuring the inheritance or assets of the children in the most efficient way.

If you are interested in learning more about the use of SNTs, including those that are court-ordered, please contact our office.

## TAX COURT ALLOWS 35% DISCOUNT OF FLP

Because of our litigious society, many of our clients are interested in asset protection planning. As a result, we have established many Family Limited Partnerships (FLPs) or Limited Liability Companies (LLCs) to hold the assets of our clients in order to protect them from creditors. Most state statutes relating to FLPs and LLCs only permit a creditor to obtain a "charging order" against the interest of the entity owned by the partner or member, as opposed to the underlying assets themselves. In that case, the owner-

ship interest is "charged" with the payment of the debt so that if income is distributed from the entity to the owner, the creditor is entitled to the income. Generally though, the payment of income can be avoided. In addition to the asset protection benefits of FLPs and LLCs, the value of the interests owned by a partner or member are usually discounted for estate and gift tax purposes. Recently, the IRS had success in having the Tax Court disallow valuation discounts. However, in a recent Tax Court case,

Kelley v. Commissioner, TC Memo. 2005-235 (Oct. 11, 2005), the Tax Court awarded a 35% valuation discount for lack of control and lack of marketability for interests in a FLP that held only cash and certificates of deposit. This case is evidence that if a FLP or LLC is properly funded, administered and maintained, the ownership interests of the entity should be entitled to valuation discounts for estate and gift tax purposes. Please contact us if you would like to discuss the use of a FLP or LLC in your estate plan.



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## LARRY BRAY ATTENDS HECKERLING INSTITUTE

Larry Bray recently attended the 40th annual Heckerling Institute on Estate Planning sponsored by the University of Miami on January 9 through January 13 in Miami, Florida.

As the largest gathering of estate planning professionals in the country, the Institute offers a unique opportunity for attorneys to exchange ideas, network, and review the latest in technology, products and

services. The Institute's faculty is composed of the nation's foremost estate planning experts. Larry was therefore able to review the year's most significant developments in estate planning, obtain practical guidance on sophisticated estate planning strategies, and address unique planning and drafting issues. Larry attended sessions on retirement plan bene-

ficiary designations, asset protection planning, business succession planning, and charitable planning, among others. Larry will continue to seek the best estate planning education in order to provide his clients with the best possible service while drafting the most efficient estate planning documents to comply with the ever changing estate and gift tax laws.

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