

The Impact of Special Needs Trusts on Eligibility for Subsidized Housing

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Both the federal and state governments subsidize housing for disabled and elderly individuals. The subsidies come in the form of below market-rent units in public and private housing developments and vouchers for use in the private market. Tenants in subsidized housing pay approximately 30% of their income in rent.

Many disabled individuals are beneficiaries of Special Needs Trusts (SNTs) created either by third parties (their parents, siblings or others) or created by the disabled persons themselves. Generally the goal of these trusts is to allow the beneficiary to qualify for income from the Supplemental Security Income (SSI) program and for Medicaid. A question asked often is: "How do those trusts affect the beneficiary's eligibility for subsidized housing or the calculation of rent?"

ASSETS AND INCOME: EFFECT ON ELIGIBILITY

FINANCIAL ELIGIBILITY RULES

To understand the effect of trusts on eligibility, it is essential to understand the housing eligibility rules. Unlike many public benefits programs, the subsidized housing programs, most notably the federal Section 8 program, determine financial eligibility with reference only to income, not with direct reference to assets. "Income" includes regular income from employment and public benefits such as SSI and SSDI. In addition "income" derived from *net family assets* in excess of \$5,000 is included in countable income. *Net family assets* include the net cash value of assets after deducting reasonable liquidation costs but excluding necessary items of personal property such as "furniture" and "automobiles". To determine the income derived from *net family assets* the rules require the housing agency to consider the greater of (1) *actual* income derived from all *net family assets* or (2) a percentage of the value based on the current passbook savings rate.

ASSET TRANSFERS

Because assets do not count in determining eligibility, the rules do not impose eligibility penalties on individuals who have given away assets. However, *net family assets* include the value of assets disposed of for less than fair market value during the two years preceding the date of the application for the program. For example, if the current passbook savings rate is 1%, a transfer of \$100,000 to another individual or to a SNT will cause income of \$1,000 per year (or \$83.33 per month) to be imputed to the beneficiary for two years following the transfer. For federally subsidized housing, if assets were transferred to a trust and were received through a settlement or judgment, there may be an exception to the

inclusion of the settlement in the calculation of *net family assets*. (See Housing Handbook: 4350.3 Occupancy Requirements of Subsidized Multifamily Housing Programs Ch.5, Sec.1, Part 5-7, G.6.e. (page 5-34)).

TRUST DISTRIBUTIONS: EFFECT ON RENTAL CALCULATION

As assets are not counted, the existence of a trust has no consequence on eligibility for subsidized housing. However, regular distributions from a trust may be treated as income resulting in an increased rent. For example, if the trustee pays a \$200 utility bill every month, that payment may be treated as regular recurring income to the beneficiary/tenant. The tenant's countable monthly income will thus be \$200 higher and will result in an increased rental payment of approximately \$66.

The federal regulations found at 24 CFR 5.609(c) (9) exclude from the definition of income temporary, nonrecurring or sporadic income (including gifts). Thus, the trustee of a SNT should be advised to make irregular distributions on behalf of the trust beneficiary rather than to make recurring payments on the beneficiary's behalf if the beneficiary is in federally subsidized housing.

The Massachusetts Department of Housing and Community Development has issued more precise rules. Regularly recurring contributions or gifts from non household members, including trusts, count. 760 CMR 605 defines regularly recurring contributions or gifts from a non-household member as gifts or contributions that occur at least twice a year for two or more years provided that a contribution or gift in excess of \$2,000 which occurs once a year from year to year for two or more years to also be deemed to be regularly recurring. Thus, if a trust beneficiary lives in housing subsidized by the Commonwealth, structuring distributions is more challenging if maintaining as low a rent as possible is the goal.

CONCLUSION

With creative budgeting, it is possible to administer a SNT without causing an increase in the beneficiary's rent. By having the trust pay large one time expenditures and leaving regularly recurring expenses to the trust beneficiary, the trustee can help to maximize the benefits available to the trust beneficiary.