GUIDE FOR TRUSTEES

TRUSTS FOR BENEFICIARIES OF THE NATIONAL COMPASSION FUND

Trusts are often complex and understanding how they work can be overwhelming. This guide will provide a brief overview of trusts and the responsibilities of a trustee. It is important to understand that this document is only legal information and should not be viewed as legal advice.

WHAT IS A TRUST?

A trust is a method of maintaining or transferring assets that allows the creator of the trust, the grantor to give another party, the trustee, the right to hold assets on behalf of another person, the beneficiary. An asset can be cash, property, or other things of value. In this case, the irrevocable trust created for the beneficiary child will allow the National Compassion Fund to transfer money into a trust for the benefit of the beneficiary child. An irrevocable trust is one that cannot be changed or ended after it is created and until the trust is terminated. This trust terminates when the beneficiary child turns 21.

This trust will be managed by a trustee. A trustee is someone whole holds the assets for the benefit of a third party. A trustee has an ethical and legal responsibility to properly manage the assets in the trust. These responsibilities are called fiduciary duties.

WHAT IS A DISTRIBUTION?

A distribution is a disbursement or sometimes a payment made by the trustee using funds from the trust. For example, using funds from the trust to pay a hospital bill for the beneficiary would be a distribution.

Among other duties, the trustee has a duty to make distributions in accordance with the Trust Agreement. In this case, the Trust Agreement allows the trustee to make distributions for the Health, Education, Maintenance, and Support of the beneficiary. In general, support means more than the bare necessities of life and education is considered to include tuition, fees, books and other costs of higher education and/or technical training. The trustee must understand and consider all of these terms because they could affect distributions.

Before making distributions, the trustee should also consider: the size of the trust estate; the beneficiary's age; the beneficiary's mental and physical health; the beneficiary's needs, habits, and interests; the other resources available to the beneficiary; and the possibility of future emergencies.

Distributions made by the trustee to the beneficiary are counted as income. If you, the beneficiary of the trust, or a member of your household receives public benefits (TANF, SNAP, Medicaid, etc.) receiving money from the National Compassion Fund may make you ineligible for those public benefits. If you or your household is required to have income below a certain amount in order to qualify for public benefits, then the trustee must ensure that the distributions made do not cause you or your household to be over income. If the beneficiary receives SSI then it may be necessary to establish a Special Needs Trust. **It is important that you discuss the possibilities and**

potential outcomes with your assigned San Antonio Legal Services Association attorney.

WHAT ARE THE DUTIES OF A TRUSTEE?

The National Compassion Fund allows you, the parent or guardian of the beneficiary of the trust, the option to use the bank as a trustee or serving as trustee yourself. It is important for you to understand that by agreeing to serve as the trustee of a trust you are agreeing to be held legally accountable for your actions as a fiduciary.

You, as the trustee, will be responsible for carrying out the obligations and performing all of the duties of a trustee. The obligations and duties of the trustee are listed in the terms of the trust. In general, a trustee has a (1) duty of loyalty, (2) duty of competence, (3) duty to reasonably exercise discretion, and (4) duty of full disclosure.

DUTY OF LOYALTY.

The trustee's duty of loyalty means that a trustee may not personally benefit from serving as trustee and must always place the interests of the beneficiary above the personal interests of the trustee. This means you, as the trustee, cannot use the money in the trust for your own benefit. The child is the beneficiary of the trust, not you as the parent, and distributions are to be made for the benefit of the child. A beneficiary is entitled to have a competent, loyal and neutral trustee who is willing to act in the beneficiary's best interest.

DUTY OF COMPETENCE.

The trustee's duty of competence means many things. In general, the duty of competence means that a trustee must not be negligent and must exercise reasonable care. The duty of competence also means that the trustee must keep the trust assets separate from other property. This means, for example, that you cannot mix the money in the trust with the money in your checking account.

DUTY TO REASONABLY EXERCISE DISCRETION.

The trustee's duty to reasonably exercise discretion is also related to distributions, expenses, investments, etc. Specifically, in doing these things, the trustee must exercise discretion by making informed decisions based on the terms of the trust. There is no absolute discretion. This means that the trustee cannot make decisions on their own without following the terms of the trust. As noted in early sections of this guide, the Trust Agreement permits distributions for the Health, Education, Maintenance, and Support of the beneficiary. There are your guidelines. Plainly, borrowing from the trust for personal use and outside of the trust's terms is fraud. Any violation of the guidelines could result in legal responsibility.

DUTY OF FULL DISCLOSURE.

Lastly, the trustee has a duty to make a full and accurate disclosure of all material facts. This means that the trustee has a duty to keep the beneficiary informed. The beneficiary has a right to request information about how the trustee is managing the trust. This includes any distributions or payments made by the trustee and any expenses of the trust. The beneficiary has the right to view information about the trust, request account information, and inspect records.

This means that the trustee is required to keep full, and accurate records concerning the status of the trust estate and of all acts the trustee has performed. This record keeping style will allow the trustee to meet the duty to disclose trust activities to the beneficiaries and to provide accountings to the beneficiaries if requested.

WHAT IS TRUSTEE LIABILITY?

It is important for you to understand that by agreeing to serve as the trustee of the trust you are agreeing to be held legally accountable for your actions as a fiduciary. When a trustee does not perform its duties and breaks the rules, this is called a breach of fiduciary duty and is a violation of the rules of trust and the Texas Trust Property Code.

The trust will last as long as the beneficiary is living or until the beneficiary turns 21. While the beneficiary is a child now, the beneficiary will not always be a minor. Once the beneficiary of the trust reached the age of majority (18) the beneficiary has four years to bring a claim for any breach of duty that occurred while the beneficiary was a minor.

As a consequence, if the trustee breaches its fiduciary duty, the trustee may be removed and ordered to pay compensatory damages, punitive damages, or double or treble damages. The terms damages refers to the amount of money the law requires to be paid for a violation of the law or breach of duty. The trustee is personally liable for any damages resulting from a breach of fiduciary duty.

It is important to familiarize yourself with the fiduciary duties of a trustee so that you as parent or guardian of the beneficiary can decide who is best equipped to serve as trustee of the trust. If you decide against allowing the bank to serve as trustee, it is even more important that you understand the details of the trust, your role will be as trustee, and the consequences for any violations, as to avoid violating any laws.