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**ESTATE PLANNING FOR FAMILIES WITH
A LOVED ONE WHO IS DISABLED**

For purposes of qualifying for Supplemental Security Income (hereinafter "SSI") and Medicaid, or Arizona Health Care Cost Containment System (hereinafter "AHCCCS") as it is known in Arizona, benefits, an individual may have no more than \$2,000 in countable resources. The statute and regulations provide exemptions for certain resources, like a personal residence, a vehicle, personal and household, and irrevocable burial plans, to name a few.

Both the SSI and AHCCCS benefit programs exclude **Non-Grantor** or **Third Party "Special Needs Trusts,"** i.e., trusts that are established and funded by someone other than the Beneficiary, as a resource as long as someone other than the Beneficiary serves as Trustee, and disbursements are within the sole and absolute discretion of the Trustee. Note, however, that both the SSI and AHCCCS benefit programs count as income any distributions from a Special Needs Trust for food, shelter or anything that can be converted into such, like cash. Such distributions, although they do not result in the Trust being treated as an available or countable resource to the Beneficiary, may result in a reduction or loss of benefits.

Oftentimes it is the family, such as the parents or grandparents of an individual who is eligible for SSI and AHCCCS who is concerned about that loved one's continued eligibility for benefits at the time of their deaths should that individual benefit from their estate. Family members can provide for their loved one with special needs by doing a will or trust that, upon their death, retains that loved one's beneficial interest in trust to be managed by a Trustee of their selection. Thus, it is imperative that such trusts be drafted in such a way so as to make it clear that any and all distributions are within the sole and absolute discretion of the trustee and that does not contain language requiring the Trustee to make certain distributions, or that can be interpreted as providing for mandatory distributions to or on behalf of the Beneficiary. In addition, language that can be interpreted as providing for the basic support needs of the Beneficiary, such as "basic living needs", "welfare," or "essential dietary needs" should be avoided. At the same time, the language should not be overly restrictive by expressly disallowing distributions for such needs.

Such a trust is not counted as a resource as it consists of assets of the decedent rather than the Beneficiary, and distributions for other than food, shelter, or cash will not affect eligibility. Finally, AHCCCS has no right to reimbursement from such third party trusts!

Trustees of such trusts must also be mindful of the reporting requirements of the SSI and AHCCCS programs. Both programs require that the establishment of such trusts be promptly reported to the respective programs, with a copy of the trust and verification of its funding. Both programs may also request periodic accountings of trust disbursements so as to determine to what extent, if any, they qualify as income and potentially impact eligibility or benefits.