# TRUST & ESTATE ADMINISTRATION
# SPECIAL NEEDS TRUST

First Business®

A Special Needs Trust is used primarily to promote the happiness, welfare, and development of the person with special needs without in any way reducing the actual or potential services or financial assistance that person receives, or may receive, from any local, state, or federal government or agency.

In planning for the financial future of the special needs individual in your life, a dilemma all too often arises when it becomes necessary to determine just who will serve in the capacity as trustee. The answer to this crucial question goes to the very heart of the efficient administration of the trust and thus the well-being and care of the disabled or handicapped beneficiary.

The proper administration and investment of the funds of a Special Needs Trust can be quite complex. The unsophisticated trustee may miss opportunities to maximize the disabled individual's quality of life through proper investment management techniques and the appropriate and sometimes innovative distribution of trust assets. Usually the parents of a disabled individual appoint themselves as the initial trustees. This may be sensible as the parents know the needs of their child as no one else does. However, the prudent investment of the trust portfolio may be a burden that parents wish to turn over to a corporate fiduciary. After the parents pass on, that corporate fiduciary can assume additional responsibilities as successor trustee. Thus the financial care of the beneficiary continues without interruption.

A family member can be named as a co-trustee or advisor to the corporate trustee to ensure that an individual who has day-to-day contact with the individual with special needs is advocating for him or her, and advising the corporate trustee as to expenses and distribution needs.

## WHY A CORPORATE TRUSTEE?

Bob Johnson is a disabled adult. His parents left him well provided for in a Special Needs Trust, shortly before their untimely deaths. Bob, a person with a moderate developmental disability, needed distributions from a Special Needs Trust to supplement his ordinary living expenses. In choosing a successor trustee, the logical choice was Grandma Johnson—an individual of integrity who is well acquainted with Bob's special needs.

Although at the beginning the relationship was a success, conflicts about the use of trust assets soon arose. Bob wanted the trust to purchase an automobile for him (he didn't drive). When Grandma refused, the bottom fell out of their relationship. Likewise, Grandma soon became alarmed at Bob's inability to pay his rent of $600 a month.

Grandma, using some good old-fashioned common sense, arranged to distribute the funds for Bob's rent to him out of the trust income. She didn't realize that such a payment disqualified Bob, on a dollar-for-dollar basis from his Supplemental Security Income (SSI) benefits. An experienced corporate trustee would have recognized an opportunity to make payments directly to the landlord resulting in only a one-third offset to the monthly SSI benefits rate. Or, alternatively, if the trust assets and language permitted, the corporate trustee might have made a lump sum payment of the rent for the entire year using the "presumed maximum value rule."

The substitution of a corporate trustee would both enhance the relationship between Grandma and Bob and maximize the benefits Bob receives from his Special Needs Trust. Furthermore, Bob's parents should have anticipated the likelihood that Grandma likely will not outlive her grandson, and there is clearly the need to name a successor corporate trustee – an entity that lives on into perpetuity – to continue the trust administration.

## WANT TO LEARN MORE?

Let's talk. Contact your First Business representative today.