

# INSTRUCTIONS FOR ESTABLISHING A SPECIAL NEEDS TRUST

These instructions are intended as a guideline only and should not be relied upon as a comprehensive list of duties in a special needs trust.

The following information and forms are designed to offer procedural advice and direction to accomplish this task.

If you have a settlement for the benefit of a minor or an alleged incompetent with special needs, it may be in the ward’s best interest to establish a SPECIAL NEEDS TRUST.

First, it is necessary for a guardian to be appointed for the minor or alleged incompetent. Second, the guardian shall apply for the approval of the settlement for the benefit of the minor or incompetent. This guardian is also the person who will apply for the SPECIAL NEEDS TRUST.

This trust shall be administered as any other trust in the Probate Court. Bond shall be required of every non-corporate fiduciary unless bond is waived according to law.

A fee of \$105.00 deposit is required at the time of filing. Please confirm the amount with the Cashier since filing fees may have changed subsequent to the publication of the instruction sheet. **This fee must be paid in cash, money order, certified check, MasterCard, Discover, or American Express. No personal checks will be accepted.**

The forms may be obtained from the Issue Desk on the 9<sup>th</sup> floor of the Probate Court, 230 E. 9<sup>th</sup> Street, Cincinnati, Ohio or by downloading the forms from the web site.

## PROCEDURAL STEPS

<b>Step 1: Complete the following forms</b>	
Application to Create a [Special Needs] Trust and to Approve the Trust form. (H.C. Form 115.54) <ul style="list-style-type: none"> <li>- Complete form.</li> <li>- <b>This application is filed as part of the guardianship proceedings.</b></li> <li>- The specific reasons for seeking a SPECIAL NEEDS TRUST must be clearly explained in a memorandum.</li> </ul> <p><b>A copy of the application together with the proposed SPECIAL NEEDS TRUST should be delivered to the Chief Magistrate so the Judge may review the proposed trust before the hearing.</b></p>	<b>Filed in the guardianship</b>
Entry Setting Hearing (H.C. Form 202.00) <ul style="list-style-type: none"> <li>- Fill in the name of the ward only, the clerk will fill in the hearing date &amp; time and initial the entry.</li> <li>- The form must be taken to the Assignment Desk on the 10<sup>th</sup> floor of the Probate Court to obtain a hearing date on the Judge’s calendar.</li> </ul>	<b>Filed in the guardianship</b>
Entry Creating Trust and Approving Trust Form (H.C. 115.55) <ul style="list-style-type: none"> <li>- Complete form.</li> <li>- Bring to Court on the day of the hearing.</li> <li>- If the SPECIAL NEEDS TRUST is approved, the Judge will sign it.</li> </ul>	<b>Filed in the guardianship after the hearing</b>

<p>Application for Appointment of a Trust (H.C. 54.1)</p> <ul style="list-style-type: none"> <li>- Complete form.</li> <li>- <b>This application will be given a separate case number.</b></li> </ul>	<p>Filed at the time the Application to Create Trust is filed. Set for hearing same day and time.</p>
<p>Entry Setting Hearing (H.C. Form 202.00)</p> <ul style="list-style-type: none"> <li>- Fill in the name of the ward only, the clerk will fill in the hearing date &amp; time and initial the entry.</li> <li>- The form must be taken to the Assignment Desk on the 10<sup>th</sup> floor of the Probate Court to obtain a hearing date of the Judge's calendar.</li> </ul>	<p>Given the same date and time as the Application to Create Trust</p>
<p><b>Special Needs Trust Agreement</b></p> <ul style="list-style-type: none"> <li>- There is no prescribed trust form.</li> <li>- Counsel are directed to 42 U.S.C. Sec. 1396p(d)(4)(A) and Ohio Administrative Code 5101-1-39-271 for guidance in drafting said trusts.</li> <li>- The guardian shall be identified as the settlor of said trust.</li> <li>- No trust shall be approved which seeks to give unfettered discretion for disbursements to the trustee.</li> </ul>	
<p>Trustee's Bond (H.C. 54.3)</p> <ul style="list-style-type: none"> <li>- When applying to be appointed trustee, the applicant is required to execute a bond.</li> <li>- Applicant must execute and date form.</li> <li>- <b>Bond must be executed by a surety company in front of the court personnel.</b></li> <li>- The bond shall be twice the value of the assets funding the trust, with a minimum bond requirement of \$20,000.</li> </ul>	<p>Once signed by the applicant, the bond form needs to be left with the Court in order for the agent of the surety company to execute the bond in the presence of the clerk.</p> <p>May be left with the Court anytime prior to the hearing.</p>
<p>Application for Release of Funds to Custodial Depository in Lieu of Bond (H.C.204.05)</p> <ul style="list-style-type: none"> <li>- Complete form.</li> <li>- Filed when there is not an attorney and applicant does not want to obtain one.</li> <li>- Filed to dispense with requirement of joint control with an attorney, posting of a bond and filing of fiduciary accounts.</li> </ul>	<p>Normally the day of the hearing</p>
<p>Entry Releasing Funds to Custodial Depository in Lieu of Bond (H.C. 204.06)</p> <ul style="list-style-type: none"> <li>- Complete form.</li> <li>- Make sure you have obtained an account number from the bank.</li> </ul>	<p>Normally the day of the hearing</p>
<p>Verification of Receipt and Deposit of Custodial Depository (H.C. 204.07)</p> <ul style="list-style-type: none"> <li>- A bank clerk completes form once the funds are in the account.</li> <li>- Normally the bank sends the form to the court.</li> </ul>	<p>Filed by the bank, normally within 30 days from filing of Entry Releasing Funds to Custodial Depository</p>

<p>Entry Appointing Trustee; Letters of Authority (H.C. 54.4)</p> <ul style="list-style-type: none"> <li>- Complete form.</li> <li>- If the Judge approves the SPECIAL NEEDS TRUST he will sign the entry.</li> </ul>	<p>Preferably at the time of initial filing, if not, day of hearing.</p>
<p><b>THE NEXT GROUP OF FORMS IS NOT NEEDED AT THE INITIAL FILING.</b></p>	
<p>Trustee's Inventory (H.C. Form 54.5)</p> <ul style="list-style-type: none"> <li>- The trustee must file an inventory specifically listing the assets of the trust and the value of those assets.</li> </ul>	<p>3 months from date of appointment</p>
<p>Trustee's Account (H.C. Form 54.8)</p> <ul style="list-style-type: none"> <li>- From the date of appointment, the trustee is responsible for filing an account every 2 years.</li> <li>- On back of Trustee's Account (form 54.8), have an employee of each bank where trust funds are deposited complete a bank certificate.</li> <li>- Trustee must sign form.</li> </ul>	<p>Every 2 years starting with date of appointment</p>
<p>Receipts and Disbursements (H.C. Form 54.81)</p> <ul style="list-style-type: none"> <li>- Specifically list the assets of the trust that were listed on the Inventory (54.5) plus all income and disbursements made.</li> </ul>	<p>Filed with account</p>
<p>Assets Remaining in Trustee's Hands (H.C. Form 54.82)</p> <ul style="list-style-type: none"> <li>- Complete form if filing a current account.</li> <li>- Specifically describe those assets of the trust remaining in trustee's hands.</li> </ul>	
<p>Entry Setting Hearing on Account (H.C. 213.8)</p> <ul style="list-style-type: none"> <li>- Fill in the caption and have attorney sign.</li> <li>- The account clerk will fill in hearing date &amp; time and sign &amp; date the form.</li> </ul>	<p>Filed with account.</p>
<p>Notice of Hearing on Account (H.C. 13.5)  Waiver of Notice of Hearing (H.C. 13.7)</p> <ul style="list-style-type: none"> <li>- When filing a <i>current</i> account, all <i>income</i> beneficiaries are entitled to be notified of the hearing on the account.</li> <li>- When filing a <i>final</i> account, all <i>trust</i> beneficiaries are entitled to be notified of the hearing on the account.</li> <li>- You must either obtain a waiver from each individual (H.C. 13.7) or perfect certified mail notice (H.C. 13.5) on each individual. See Local Rule 64.1(D)</li> <li>- If certified mail notice is used, present certified mail return (green card) and a copy of the notice that was sent to each individual to the magistrate assigned to your case.</li> </ul>	
<p>Entry Approving and Settling Account (H.C. 13.3)</p> <ul style="list-style-type: none"> <li>- Fill in the caption and case number.</li> <li>- Magistrate will complete form on the day of the account hearing.</li> </ul>	

<p><b>STEP 2: ASSIGNING OF MAGISTRATE, REVIEWING OF FORMS, AND SETTING HEARING DATE.</b></p>	
<p>When the initial forms have been completed, present them to the magistrate's assistant at the information desk on the 9<sup>th</sup> Issue Desk where the clerk will write the initials of the assigned magistrate on the form. From the Information Desk you will go to the assignment desk on the 10<sup>th</sup> floor to obtain a hearing on the Judge's docket.</p>	
<p><b>STEP 3: FILING OF FORMS WITH CASHIER</b></p>	
<p>All forms are taken to the cashier who will assign a case number. At this time, the cashier will require the payment of the filing fee of <b>\$105.00</b>. The cashier will stamp the case number on all the papers plus one set of copies, if provided, and clock in the original forms that can be docketed that day. After clocking in the forms, the cashier will place the forms in a file folder and give it to you to take to the Issue Desk.</p>	
<p><b>STEP 4: THE HEARING – WHAT TO EXPECT</b></p>	
<p>At the date and time of the hearing, you (and your attorney, if an attorney is obtained) should report to the 9<sup>th</sup> Floor of the Probate Court. (The Magistrate will already have the file with the forms you initially filed.) If you had to obtain waivers or serve notices of the hearing you will give them to the Magistrate. The Judge will conduct the hearing, and if he approves the trust he will sign the Entry Creating Trust and Approving Trust Form (H.C. 115.55) to be filed under the guardianship number. The Magistrate will sign the Entry Appointing Trustee; Letters of Authority (H.C. 54.4), but they cannot be issued until the Judge signs the trust agreement. Once the trust agreement is signed, you must go to the Issue Desk on the 9th Floor to have the original letters issued.</p>	