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HOME CONTROL THROUGH TRUST AND ESTATE PLANNING

Living in a home of one's own is a dream for many but it can be very difficult to realize, especially for individuals with a disability. With proper planning, owning or renting a home of one's own is a viable option for even those persons with severe developmental delays and/or health and physical challenges. Families can maximize public and private resources and community support to ensure that a family member with a disability will have the opportunity to live independently if he or she so chooses.

If a parent dies and leaves an adult disabled child an outright inheritance, the child may lose eligibility for any or all of several federal benefit programs for which he or she is otherwise qualified. It is therefore critical that all families write a will that includes a supplemental needs trust (SNT) for the family member who is challenged by a physical or cognitive disability. A carefully written SNT will help manage the funds set aside for a beneficiary's future without influencing his/her eligibility for government assistance programs, many of which are necessary to make home ownership feasible. A trust can provide funds for housekeeping, home maintenance and repairs, lawn and snow removal services, automobile or other private transportation expenses, and advocacy services without affecting benefits. By combining the private funds managed by a SNT with the financial assistance of government programs, a trust beneficiary can enjoy a higher standard of living than he/she could otherwise afford.

Most parents are not able to save enough money before their death to pay for all of the future needs of their child. A SNT enables a family to set aside funds for their child to be used in addition to government assistance like SSI, Medicaid, food stamps, personal care attendants, and housing subsidy programs such as Section 8. When a person with a disability has the protection of a privately funded SNT, he/she retains eligibility for any and all public benefits for which he/she is eligible due to his/her disabilities.

One way to reduce the cost of independent living is through the purchase of a home with reduced financing costs. Families and individuals can get very affordable deals on homes which have been repossessed. When a person fails to pay his or her mortgage payments the bank is allowed to foreclose on these loans and claim ownership of the home. Because banks are often anxious to sell these homes quickly in order to minimize their loss on the unpaid mortgage, foreclosed properties often sell for below market value. Information regarding foreclosed properties can be obtained from the following sources:

1) **The Federal Deposit Insurance Corporation** - The FDIC will provide a list of foreclosed properties that are for sale. This list contains the name, address, description and price of the properties, as well as contact persons and phone numbers.

2) **Home Mortgage Fund Providers** - The Fannie Mae and Freddie Mac corporations purchase home mortgages and work with lenders to provide mortgage loans to individuals and families with limited incomes. Online databases often list Fannie Mae and Freddie Mac properties for sale alongside those offered by the FDIC.

3) **Housing and Urban Development (HUD)** - HUD takes over properties insured through the Federal Housing Administration (FHA). Because HUD tries to dispose of these properties quickly, one can often purchase homes for below-market price.

Reducing the down payment or financing costs of a home can also increase its affordability for first time or low income buyers. The following programs provide this type of assistance:

1) **The Section 502 and Section 515 Programs** - The U.S. Department of Agriculture administers several housing assistance programs, known collectively as the Rural Housing Programs. The Section 502 Program finances the purchase, construction, or repair of single-family homes for individuals who are low or very low income. The Section 515 Program offers very low to moderate income families low interest loans to finance multifamily or congregate housing.

2) **Shelter Plus Care** - This program, available through the McKinney/Vento Homeless Assistance Act of 1987, offers rental assistance to homeless persons with disabilities in conjunction with outside-funded supportive sources. The funds are available for any of four assistance types, the most appropriate for individuals with disabilities being tenant-based rental assistance (TRA). TRA participants reside in housing of their choice (barring any requirements based on supportive service availability), which is funded for a contract term of five years. Arguably, all persons with a disability or handicap may be considered at risk for homelessness, as their parents are not required to supplement their support as adults. Those individuals whose families are no longer able to support them are thus eligible for this program.

3) **The Community Reinvestment Act (CRA)** - Passed by Congress in 1977, the CRA requires banks to invest in the community they serve. Honest assessment of the financing needs of the community, especially its low and moderate income neighborhoods, leads many banks to earmark large sums of mortgage money for community investment. Under this Act, a bank may allow an individual to take over a mortgage on a foreclosed property. By taking over an existing mortgage through the CRA, a low or moderate income person must only repay the amount outstanding on the mortgage, and thus may take advantage of below-market rates and/or no down payment. As a result of changes to the Act made in 1989, banks are now required to make public disclosure of its CRA rating. While the Act does not demand that banks give more

favorable terms, many do, as they will not meet community investment standards unless enough individuals and families can qualify for home purchases. Lenders will seldom inform the buyer of these terms, so buyers need to be aggressive in pursuing a mortgage through the CRA with the best possible terms.

There are several housing assistance programs that allow funds to be used in many different capacities, often allowing local or state offices and/or governments to dictate how the funds will be distributed or used in a specific community. Two such programs are:

1) **Community Development Block Grants** - Funded by HUD, these grants are administered through local community development offices. The funds may be used to purchase or to rehabilitate residential properties and are available only to low and moderate income individuals or families. States have a great deal of flexibility as to how these funds are used. Strong advocacy on the part of agencies and consumers can greatly impact the availability of these funds to persons who are disabled.

2) **The HOME Program -**The HOME Program, created by the National Affordable Housing Act of 1990, is the largest Federal block grant to state and local governments. The program is extremely flexible, allowing each government to design its own housing strategies to meet local needs. Every five years a Comprehensive Housing Affordability Strategy (CHAS) determines how the HOME funds are to be utilized to best aid low income persons in the acquisition of affordable housing. The five year plan is updated every year so that it reflects the changing needs of each individual community. Because this blueprint is developed on a local level, advocates can aid in the development of the plan to ensure that the program is specifically responsive to the needs of persons with disabilities. HOME funds can be provided to persons on waiting lists for the Section 8 program, be used to rehabilitate rental or homeowner properties, and may even be used to construct new property. The HOME program bridges the gap between the financial means of potential homeowners and the market cost of housing in their community.

The most commonly used form of housing assistance for low income individuals is the HUD **Housing Choice Voucher Program (HCVP).** Originally created in 1975 as the Section 8 Program, the HCVP in an attempt to increase the housing options of low income individuals and reduce the concentration of low income households in particular neighborhoods.

The **HCVP tenant-based assistance** allows individuals and families to select private rental housing from a list of approved properties in their community. Tenants generally pay between 30 and 40% of their income in rent and the remaining rent is covered by a rental voucher paid directly to the landlord by a local Public Housing Authority (PHA). One of the major drawbacks of this program is that it can be difficult to find landlords who are willing to participate, as they must agree to accept the "fair market rate" determined by HUD. This so called "fair market rate" is often below the real market rate, thus forcing landlords to accept a lower rent than they might otherwise receive. Despite this obstacle, the HCVP tenant-based assistance has proven extremely successful and quite popular. The other, less commonly used types of housing assistance provided by the HCVP are in the form of **project-based rental assistance**, **homeownership assistance**, and **down payment assistance**.

By creating a SNT and taking advantage of government assistance programs like those detailed above, families can ensure that a member with a disability attains his or her goal of independent living.