

CLIENT AND FRIEND NEWSLETTER

October 2024

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LAW OFFICES OF
BETH A MCDANIEL
Professional Limited Liability Company

LOOMING DEADLINE: REPORTING UNDER THE CORPORATE TRANSPARENCY ACT. BY BETH A MCDANIEL, JD, CELA

In our December 2023 newsletter (available on our website, bethmcdaniel.com), we covered the new reporting requirements for companies. For companies created in 2024, the reporting deadline is within 90 days of formation.

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MEDICARE OPEN ENROLLMENT PERIOD



The Medicare open enrollment period (OEP) this year is October 15 through December 7, 2024. During this window, you can choose a plan, make changes to a plan, switch a plan, or review your existing coverage for

changes that will take effect January 1, 2025. This is also the time to join, switch, or drop a Medicare Part D drug coverage plan.

If you do not make any changes during the OEP, you will be automatically re-enrolled in your current plan, provided it is offered in your area....

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THE DEPLORABLE BANKRUPTCY OF THE CENTER FOR SPECIAL NEEDS TRUST ADMINISTRATION BY BETH A. MCDANIEL, JD, CELA



Special Needs Trusts are established to safeguard assets of individuals with disabilities, ensuring the beneficiaries do not lose eligibility for government benefits.

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CONT: MEDICARE OPEN ENROLLMENT PERIOD

For those turning sixty-five, the initial enrollment period (IEP) starts three months before your 65th birthday, includes your birthday month, and extends three months after. To avoid any potential gaps between the enrollment date and coverage, it is strongly recommended that you enroll within the three months leading up to your 65th birthday.

If you would like a referral to someone who can review your existing plan or assist you with an initial enrollment, please contact Margo Passeau at 425-296-3121 or margo@bethmcdaniel.com.

CONT: LOOMING DEADLINE: REPORTING UNDER THE CORPORATE TRANSPARENCY ACT

For companies created before January 1, 2024, the reporting deadline is January 1, 2025. Filing the report is free, and the information on the report will be accessible by federal, state, local, and tribal officials. Additionally, foreign officials can request access to a company's beneficiary ownership information.

Who is required to report?

Both domestic reporting companies and

foreign reporting companies must comply with the reporting requirements. Domestic reporting companies include corporations, limited liability companies, and other entities created by the filing of a document with a secretary of state or other similar office in the United States. Foreign reporting companies are entities formed under the laws of a foreign country that are registered to do business in the United States through a

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CONT: LOOMING DEADLINE: REPORTING UNDER THE CORPORATE TRANSPARENCY ACT

Secretary of State or similar office.

Are any companies exempt?

Yes, twenty-three types of entities are exempt from reporting, including larger companies, banks, credit unions, investment services, accounting firms, public utilities, and inactive entities. Law firms are not exempt. Trusts, which do not require registration with a Secretary of State or similar office, are also exempt.

How and when do you report?

Companies must submit their beneficial ownership information to the United States government a via a 'BOI Report,' on the following website: [fincen.gov](https://www.fincen.gov). FinCEN (Financial Crimes Enforcement Network) is a bureau of the U.S. Department of the Treasury. The report does not need to be filed annually; however, there is a requirement to file updated or corrected reports within 30 days of any changes or discovery of errors.

Why is this a requirement?

The United States government wants to identify the beneficial owners of these companies and the individuals who have substantial control over the companies.

What is the origin of this reporting requirement?

It stems from the Corporate Transparency Act, which was enacted with bipartisan congressional support.

What are the consequences for failure to file a report?

Non-exempt Companies that fail to report can face civil fine penalties of up to \$500.00 for each day the violation continues unremedied. As one colleague noted, since our government can move slowly, you may not receive an immediate 'violation notice,' but instead receive a notice imposing a substantial fine months, or even years, later.

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Additionally, there are potential criminal penalties for failing to report or for providing false information which can include individual fines of up to \$10,000 or two-years imprisonment for willful violations.

Per the FinCen website, the report is

straightforward and should not require the assistance of a CPA or attorney to complete it. Please contact our client care coordinator, Margo Passeau, at (425) 296-3121 or margo@bethmcdaniel.com if you have additional questions regarding this corporate reporting requirement.

CONT: THE DEPLORABLE BANKRUPTCY OF THE CENTER FOR SPECIAL NEEDS TRUST ADMINISTRATION

These trusts can be set up individually, or as part of a 'pooled trust,' where beneficiaries' assets are managed together with the assets of other beneficiaries. Assets in a special needs trust can come from a various sources including inheritance, gifts, settlements, or from the beneficiary's own earnings. A settlement received on behalf of an individual with disabilities may result from an accident, neglect, medical malpractice, or other legal claims.

It is possible for a special needs trust to hold a significant amount of money. Having money in a special needs trust enables individuals with disabilities to become eligible or continue to be eligible for needs-based benefits. The trust's funds are used to supplement these benefits and the goal, depending upon the trust's assets, is for the trust to last for the beneficiary's lifetime. If the trust is funded with the beneficiary's own assets, the state(s) are entitled to reimbursement upon the beneficiary's death.

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CONT: THE DEPLORABLE BANKRUPTCY OF THE CENTER FOR SPECIAL NEEDS TRUST ADMINISTRATION

Generally, Trustees have the highest fiduciary duty under the law. Additional specialization is required for Trustees of special needs trusts as the assets need to be appropriately invested and, depending on the trust's terms, there needs to be a concerted effort to ensure the beneficiary receives the needs-based benefits for which they are entitled and that they are utilized prior to using trust assets towards similar services.

Because of the additional sophistication required, Trustees of special needs trusts are often professionals. The Trustee can be an individual trustee, a trust company, or the trust department of a bank. In our state, most special needs trusts are court reporting; meaning, the Trustee must annually submit a report to the Court for approval. In other instances, as beneficiaries often do not possess the necessary competence to review

and consent trust reports, annual reports are provided to the beneficiary's guardian/conservator, interested family members, or agent.

There are a number of trust companies which act as Trustee of special needs trusts, many of whom administer special needs trusts in multiple states. One such company is the Center of Special Needs Trust Administration, based in St. Petersburg, Florida.

I have had the privilege of attending on several of Stetson's University School of Law's annual Special Needs Trust Conferences in St. Petersburg, Florida. As with many conferences, there are a fair number of exhibitors present. The last Stetson conference I attended in person was in October 2022. I have a vague recollection of seeing a table for the 'Center of Special Needs Trust Administration' (the Center). I remember the booth's colors being primarily black and gold and that a

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distinguished looking gentleman, with whom I did not speak, sat behind the exhibitor table. I have since learned that the Center grew to have several hundred million dollars under management by marketing themselves to companies which structure settlements (planned payments over time) in lawsuits. Through the settlement company, an attorney would be engaged to draft a special needs trust in which a Trustee would manage and hold the structured settlement payments.

On February 9, 2024, the Center filed for bankruptcy. The founder is now accused of issuing loans totaling \$100 million from the Center to another company that he owns, Boston Finance Group. The loans were never repaid. The 'loans' impact over 1,000 trusts in forty-eight states (note: to date I do not know which two states are not affected).

Last week, September 26-27, 2024, I attended to the National Elder Law Foundation's annual conference in Washington DC along with other fellow Certified Elder Law Attorneys. On Friday night, I had dinner with a small group of friends, one of whom is the successor Trustee of one of the trusts formerly 'managed' by the Center.

My friend said that in September 2023, the family of the trust's young beneficiary received an annual report, which simply stated something like 'cash of \$300,000 and assets under management of \$1,800,000. Five months later, the beneficiary's family received a letter informing them of the bankruptcy.

Reportedly, the 'annual reports' looked atypical from what you would expect from a trust company and appear to have been created in Microsoft Word. Allegedly, the accounting company

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which prepared the annual reports is also owned by the founder.

How does this happen?

The Center apparently charged annual fees of 2% to each trust. The math does not work out for the assets under management to generate enough to pay both overhead and make the \$100 million dollar loan. It would be considered a 'Ponzi scheme,' as new money was used to make payments from the older trusts. Likely, the employees and board of directors knew something was amiss.

Will the affected beneficiaries ever be made whole?

Sadly, it is unlikely. It will be impossible to claw back all the funds which were stolen; moreover, one bankruptcy law firm in the case has already submitted a request to the bankruptcy court for \$750,000.00 in legal fees. Fortunately for my colleague's beneficiary, a structured settlement company pays his

beneficiary's trust \$30,000.00 per month; however, this will never replace the missing money. A group of involved successor Trustees and bankruptcy attorneys will soon be making a formal plea for elder law attorneys in the forty eight affected states, to volunteer their services to help appoint successor Trustees for all trusts formerly 'managed' by the Center which do not have successors already.

How can I best assure that this never happens to me or a loved one?

The best suggestion I can offer is that if a loved one has a special needs trust administered by a successor Trustee, you should request copies of the underlying financial documents which support the numbers in the professional Trustee's annual report. Also, a request should be made for the Trustee to be bonded. Then, if there is unanticipated financial mismanagement, the bonding company will reimburse the special needs trust and pursue action against the Trustee.

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In Washington, nineteen trust companies and departments are regulated by the Washington State Department of Financial Institutions (DFI). The list of trust companies and departments can be found at dfi.wa.gov/who-we-regulate/trusts. Those not regulated by DFI may be regulated by the Comptroller of the Currency (OCC) (ffiec.gov/NPW). Although it is not necessary for every trust company or trust department to

be regulated by the DFI, it is a start.

The court filings in the Centers for Special Needs Administration's bankruptcy and related civil litigation against them can be found on the Academy of Florida Elder Law Attorneys' website (afela.org/thecenters). In addition, if I learn more about the fall-out caused by this bankruptcy at upcoming conferences, I will share it.

If have questions or wish to make an appointment, please contact our client care coordinator, Margo Passeau, at (425) 296-3121 or margo@bethmcdaniel.com.

Disclaimer: this newsletter is informational only and should not be construed as legal advice.
