

Memorandum 92-20

Subject: Study L-708 - Special Needs Trusts

Attached is a revised draft of a Recommendation on *Special Needs Trust for Disabled Minor or Incompetent Person*. The draft incorporates revisions approved by the Commission at the last meeting, and additional revisions suggested by Team 1 of the State Bar Probate Section.

The Commission wanted to make clear the statute of limitations will not run on claims of state agencies while the trust is in existence. To do this, the staff added the following sentence to subdivision (b) of Section 3605:

While the special needs trust is in existence, the statute of limitations otherwise applicable to claims of the Department of Health Services, Department of Mental Health, and Department of Developmental Services is tolled.

The additional suggestions from Team 1 came in a letter after the last meeting. A copy of the letter is attached as Exhibit 1. In response to the letter, the staff has revised Section 3604 in the attached draft as follows:

Prob. Code § 3604 (added). Special needs trust

3604. (a) If a court makes an order under Section 3602 or 3611 that money of a minor or incompetent person be paid to a special needs trust, the terms of the trust shall be reviewed and approved by the court and shall satisfy the requirements of this section. The trust is subject to continuing jurisdiction of the court, and is subject to court supervision to the extent determined by the court.

(b) A special needs trust may be established and continued under this section only if the court determines all of the following:

(1) That the minor or incompetent person has a disability that substantially impairs the individual's ability to provide for the individual's own care or custody and constitutes a substantial handicap.

(2) That the minor or incompetent person ~~will~~ is likely to have special needs that are not likely to will not be met without the trust.

(3) That money to be paid to the trust does not exceed the amount needed that appears reasonably necessary to meet the special needs of the minor or incompetent person.

(c) If at any time it appears (1) that any of the requirements of subdivision (b) are not satisfied or the

trustee ~~is--not--making~~ refuses without good cause to make payments from the trust for the special needs of the beneficiary, and (2) that the Department of Health Services, Department of Mental Health, or Department of Developmental Services has a claim against trust property, the director of that department may petition the court for an order terminating the trust.

(d) The court's order under Section 3602 or 3611 for payment of money to a special needs trust shall include a provision that all statutory liens in favor of the Department of Health Services, Department of Mental Health, and Department of Developmental Services shall first be satisfied.

Team 4 wanted to revise the Comment to Section 3605 to make clear that the reimbursement provisions of Section 3605 do not apply to funds put in a special needs trust under the substituted judgment provisions of conservatorship law other than damages or settlement proceeds paid pursuant to a judgment or court order. The staff prefers to add a sentence to the substituted judgment provision (Section 2580) to say:

A special needs trust for money paid pursuant to a compromise or judgment for a conservatee may be established only under Chapter 4 (commencing with Section 3600) of Part 8, and not under this article.

The staff has added this provision to Section 2580 as a conforming revision, and has revised the second sentence of the Comment to Section 3605 as follows:

Section 3605 permits reimbursement from special needs trusts established under Section 3604 ~~or--under--the--substituted judgment--provisions--of--conservatorship--law--(Section 2580-2586).~~

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

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February 4, 1992

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California Law Revision Commission
Attention: Robert J. Murphy
4000 Middlefield Road D/2
Palo Alto, California 94303-4739

Re: First Supplement to Memorandum 92-5
Special Needs Trust

Dear Commissioners:

The following are Team One's comments regarding the above First Supplement. Additions or changes to the proposed text are highlighted by underline.

1. Section 3604(b)(2)

Proposed revision:

"(2) That the minor or incompetent person is likely to have special needs that may not be met without the trust."

Reason: Proving that an event will occur in the future is virtually impossible. The proper showing should be that there is a likelihood that the event will occur.

2. Section 3604(b)(3)

Proposed revision:

"(3) That money to be paid to the trust does not exceed the amount which reasonably appears necessary to meet the special needs of the minor or incompetent person."

Reason: This sentence first requires that the proponent of the trust prove how much money would be needed for the beneficiary's special needs. A more justiciable standard is to require proof of funds which "reasonably appear necessary" to meet the person's special needs.

3. Section 3604(c)

The phrase "or the trustee is not making payments from the trust for the special needs of the beneficiary" should be deleted. There are situations where distributions ought not to be made from a special needs trust but conserved for the future needs of the beneficiary. For example, the beneficiary may not require distributions immediately because the severity of the person's condition limits the person's capacity to benefit from supplemental services. As the person's condition improves, however, special needs distributions may be critical in facilitating continued improvement.

Inclusion of the above language appears to require current distributions to a beneficiary. This would destroy the flexibility and discretion which is central to the purpose of a special needs trust. Requiring that the minor or incompetent person is likely to have special needs that may not be met without the trust (§ 3604(b)(2)) solves the expressed concerns of state agencies that distributions will in fact be made for the beneficiary.

4. Section 3605(b)

Team One reiterates its position that by extending the Department of Health Services' lien rights beyond the decedent's "probate estate," the section may be inconsistent with federal law in light of Citizens' Action League v. Kizer (1989) 887 F.2d 1003. The Executive Committee's position on this matter has been repeatedly expressed both in prior Team One correspondence and during Commission meetings.

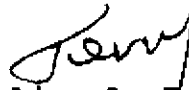
5. Section 3605 Comment

The second sentence of the Comment states "Section 3605 permits reimbursement from special needs trusts established under

Section 3604 or under the substituted judgment provisions of conservatorship law (Sections 2580-2586)."

This statement is incorrect to the extent that the substituted judgment proceedings involve funds other than damages or settlement proceeds under a judgment or court order. This sentence should be revised to read "Section 3605 permits reimbursement in certain circumstances from special needs trusts established under Section 3604 or under the substituted judgment provisions of conservatorship law (Sections 2580-2586) to receive money paid pursuant to a compromise or judgment for the conservatee."

Respectfully submitted,



Sterling L. Ross, Jr.

SLR:lbj

cc: Members of Team One
Valerie Merritt
Tom Stikker
Monica Dell'Oso
Bob Temmerman

#L-708

STATE OF CALIFORNIA

California Law Revision Commission

Staff Draft

RECOMMENDATION

SPECIAL NEEDS TRUST FOR DISABLED
MINOR OR INCOMPETENT PERSON

March 1992

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

March 13, 1992

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

This recommendation permits a court giving judgment or approving a settlement for a disabled minor or incompetent adult to order that the proceeds be paid into a special needs trust that will preserve the plaintiff's eligibility for public benefits such as social security and Medi-Cal. Authority for a court-established special needs trust will enable a minor or incompetent person who is disabled in an accident to have the same benefit as a disabled child whose parents have the means to establish a private special needs trust.

This recommendation also clarifies the state's right of reimbursement from trust assets on the beneficiary's death or on termination of the trust for benefits provided to the trust beneficiary, and provides important procedural protections to effectuate the right of reimbursement.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980, continued in Resolution Chapter 33 of the Statutes of 1991.

Respectfully submitted,

Edwin K. Marzec
Chairperson

rm218
2/14/92

SPECIAL NEEDS TRUST FOR DISABLED MINOR OR INCOMPETENT PERSON

If a child has a disability that makes the child eligible for public benefits, the child's parents with sufficient means may create a "special needs trust" for the child to supplement public benefits.¹ A special needs trust is a form of discretionary spendthrift trust designed to preserve public assistance benefits for a disabled beneficiary. The trust instrument typically provides that the trust is an emergency backup fund secondary to public resources, and directs the trustee to seek out and obtain available public benefits, particularly social security benefits and Medi-Cal. If these benefits are unavailable or insufficient, the trust instrument authorizes the trustee to supplement the benefits for the beneficiary's health, safety, and welfare. Examples of special needs not normally provided by social security or Medi-Cal that the trust may provide include dental care, special equipment such as a wheelchair, ramp access, vehicle modification for the disabled, and programs for the handicapped such as independence training and recreational programs. If the trust instrument is properly drawn, the existence of trust assets generally should not disqualify the beneficiary from receiving public benefits.²

But if a minor or incompetent person receives damages or settlement proceeds under a judgment or court order, there is no

1. Prensky & Ross, *Public Benefit Planning for the Elderly and Disabled*, in Sixteenth Annual USC Probate and Trust Conference at 40 (U.S.C. Law Center, Oct. 26, 1990).

2. E.g., Prensky & Ross, *supra* note 1, at 40-50; Frolik, *Discretionary Trusts for a Disabled Beneficiary: A Solution or a Trap for the Unwary?*, 46 U. Pitt. L. Rev. 335, 341-44 (1985) (under "federal law, a properly drawn discretionary trust will not be considered 'property' or an 'asset' of the beneficiary"); McMullen, *Family Support of the Disabled: A Legislative Proposal to Create Incentives to Support Disabled Family Members*, 23 U. Mich. J.L. Ref. 439 (1990); Mooney, *Discretionary Trusts: An Estate Plan to Supplement Public Assistance for Disabled Persons*, 25 Ariz. L. Rev. 939 (1983); Comment, *Probate Code Section 15306: Discretionary Trusts as a Financial Solution for the Disabled*, 37 UCLA L. Rev. 595 (1990).

authority for the court to direct the proceeds to be paid to a special needs trust.³ If the minor or incompetent person has severe permanent disability resulting from an accident, payment of the judgment or settlement to a guardian or conservator or to an account in the disabled person's name may disqualify the person from receiving public benefits, such as Medi-Cal.⁴ A disabled minor or incompetent person entitled to damages has just as urgent a need for public medical and other benefits as does a disabled child whose parents have the means to establish a special needs trust that preserves the child's eligibility for benefits.

The Commission recommends authorizing the court giving judgment or approving the settlement to direct that money payable to a disabled minor or incompetent person under the judgment or order be paid to a trustee of a special needs trust under terms approved by the court. This will put a disabled minor or incompetent person who is entitled to personal injury damages or settlement proceeds on an equal footing with a disabled child whose parents have the means to establish such a trust.

The Commission also recommends provisions to prevent abuse of court-ordered special needs trusts and to protect the interests of the

3. Before July 1, 1991, some lawyers were creating, and courts were approving, special needs trusts for proceeds of personal injury settlements or damages payable to a disabled minor or incompetent person. Letter from Edmond R. Davis to Arthur K. Marshall (June 13, 1991) (copy on file in office of California Law Revision Commission); letter from Sterling L. Ross, Jr., to Valerie J. Merritt (July 22, 1991) (copy on file in office of California Law Revision Commission). This was done under former statutory language that authorized the court to direct that the proceeds be deposited in a "trust company authorized to transact a trust business in this state." Former Prob. Code §§ 3602, 3611 (repealed July 1, 1991). This language was not continued in the new Probate Code. See Prob. Code §§ 3602, 3611 (operative July 1, 1991). It is not clear that the "trust company" language of former law was sufficient to authorize special needs trusts. Some local court rules may effectively forbid such trusts. See Merced County Probate Rules, Rule 1712; Solano County Probate Rules, Rule 7.69 (guardianship required where assets exceed \$20,000); Stanislaus County Probate Policy Manual, Rule 1901. These rules are reprinted in California Local Probate Rules (12th ed., Cal. Cont. Ed. Bar 1991).

4. See Prensky & Ross, *supra* note 1, at 42-50.

Department of Health Services, Department of Mental Health, and Department of Developmental Services:

(1) Trust terms must be reviewed and approved by the court.

(2) The court must require that all statutory liens in favor of the three state departments shall be satisfied before payment of money to the trust.

(3) The trust is subject to continuing jurisdiction of the court, and is subject to court supervision to the extent determined by the court.

(4) The court must determine that the minor or incompetent person has a substantial disability and is likely to have special needs that will not be met without the trust, and that the money to be paid to the trust does not exceed the amount needed to meet those special needs.

(5) Any of the three state departments may petition to terminate the trust if the department has a claim against trust property, and if either the conditions for establishing the trust are no longer satisfied or the trustee refuses without good cause to make payments for the special needs of the beneficiary.

(6) While the trust is in existence, the statute of limitations on claims of the three state departments is tolled.

(7) On death of the beneficiary or on termination of the trust, trust property is subject to claims of the three state departments for benefits provided, to the extent authorized by law,⁵ as if the trust property is owned by the beneficiary or is part of the beneficiary's estate.

(8) If the trustee knows or has reason to believe the beneficiary received services or benefits from any of the three state departments, the trustee must give notice to that department on death of the beneficiary or on termination of the trust. The department has four months after notice to make the claim. Failure to give the notice prevents the running of the statute of limitations against the claim.

5. See, e.g., 42 U.S.C. § 1396p(b)(1)(B) (Medicaid); Welf. & Inst. Code §§ 7513-7513.2 (state hospital costs), 14009.5 (Medi-Cal). See also Welf. & Inst. Code §§ 7277.1, 7278, 7279 (mentally disordered).

(9) If trust property is distributed less than four months after notice, the department may proceed against distributees of trust property for reimbursement.

RECOMMENDED LEGISLATION

Prob. Code § 2580 (amended). Order of court

2580. (a) The conservator or other interested person may file a petition under this article for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

(1) Benefiting the conservatee or the estate.

(2) Minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the conservatee.

(3) Providing gifts for such purposes, and to such charities, relatives (including the other spouse), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

(b) The action proposed in the petition may include, but is not limited to, the following:

(1) Making gifts of principal or income, or both, of the estate, outright or in trust.

(2) Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(3) Exercising or releasing the conservatee's powers as donee of a power of appointment.

(4) Entering into contracts.

(5) Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life. A special needs trust for money paid pursuant to a compromise or judgment for a conservatee may be established only under Chapter 4 (commencing with Section 3600) of Part 8, and not under this article.

(6) Exercising options of the conservatee to purchase or exchange

securities or other property.

(7) Exercising the rights of the conservatee to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

(i) Life insurance policies, plans, or benefits.

(ii) Annuity policies, plans, or benefits.

(iii) Mutual fund and other dividend investment plans.

(iv) Retirement, profit sharing, and employee welfare plans and benefits.

(8) Exercising the right of the conservatee to elect to take under or against a will.

(9) Exercising the right of the conservatee to disclaim any interest that may be disclaimed under Part 8 (commencing with Section 260) of Division 2.

(10) Exercising the right of the conservatee (i) to revoke a revocable trust or (ii) to surrender the right to revoke a revocable trust, but the court shall not authorize or require the conservator to exercise the right to revoke a revocable trust if the instrument governing the trust (i) evidences an intent to reserve the right of revocation exclusively to the conservatee, (ii) provides expressly that a conservator may not revoke the trust, or (iii) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke the trust.

(11) Making an election referred to in Section 13502 or an election and agreement referred to in Section 13503.

Comment. Paragraph (5) of subdivision (b) of Section 2580 is amended to make clear that a special needs trust for money paid pursuant to a compromise or judgment for a conservatee may only be established under Chapter 4 (commencing with Section 3600) of Part 8. See Sections 3602-3605.

Prob. Code § 3602 (amended). Disposition of remaining balance

3602. (a) If there is no guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as

provided in Article 2 (commencing with Section 3610).

(b) Except as provided in ~~subdivision~~ subdivisions (c) and (d), if there is a guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid or delivered to the guardian or conservator of the estate. Upon application of the guardian or conservator, the court making the order or giving the judgment referred to in Section 3600 or the court in which the guardianship or conservatorship proceeding is pending may, with or without notice, make an order that all or part of the money paid or to be paid to the guardian or conservator under this subdivision be deposited or invested as provided in Section 2456.

(c) Upon ex parte petition of the guardian or conservator or upon petition of any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may for good cause shown order either or both of the following:

(1) That all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(2) If there is a guardianship of the estate of the minor, that all or part of the remaining balance of money and other property not become a part of the guardianship estate and instead be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(d) Upon petition of the guardian, conservator, or any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may order that all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be paid to a special needs trust established under Section 3604 for the benefit of the minor or incompetent person.

~~(d)~~ (e) If the petition is by a person other than the guardian or

conservator, notice of hearing on a petition under subdivision (c) shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. Notice of the time and place of hearing on a petition under subdivision (d), and a copy of the petition, shall be mailed to the Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing.

Comment. Section 3602 is amended to add authority for the court to order that money of a minor or incompetent person be paid to a special needs trust established under Section 3604. As provided in Section 3604(d), before payment to the trustee, liens authorized by the Welfare and Institutions Code must first be satisfied. See, e.g., Welf. & Inst. Code §§ 7282.1, 14124.71-14124.76.

Prob. Code § 3604 (added). Special needs trust

3604. (a) If a court makes an order under Section 3602 or 3611 that money of a minor or incompetent person be paid to a special needs trust, the terms of the trust shall be reviewed and approved by the court and shall satisfy the requirements of this section. The trust is subject to continuing jurisdiction of the court, and is subject to court supervision to the extent determined by the court.

(b) A special needs trust may be established and continued under this section only if the court determines all of the following:

(1) That the minor or incompetent person has a disability that substantially impairs the individual's ability to provide for the individual's own care or custody and constitutes a substantial handicap.

(2) That the minor or incompetent person is likely to have special needs that will not be met without the trust.

(3) That money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet the special needs of the minor or incompetent person.

(c) If at any time it appears (1) that any of the requirements of subdivision (b) are not satisfied or the trustee refuses without good cause to make payments from the trust for the special needs of the beneficiary, and (2) that the Department of Health Services, Department of Mental Health, or Department of Developmental Services has a claim against trust property, that department may petition the court for an

order terminating the trust.

(d) The court's order under Section 3602 or 3611 for payment of money to a special needs trust shall include a provision that all statutory liens in favor of the Department of Health Services, Department of Mental Health, and Department of Developmental Services shall first be satisfied.

Comment. Section 3604 is new. The section permits personal injury damages or settlement proceeds for a disabled minor or incompetent person to be delivered to a trustee of a special needs trust. In approving the terms of the trust, the court may, for example, require periodic accountings, court approval for certain kinds of investments, or the giving of a surety bond.

Prob. Code § 3605 (added). Claim of Department of Health Services, Department of Mental Health, or Department of Developmental Services

3605. (a) This section applies only to a special needs trust established under Section 3604 on or after January 1, 1993.

(b) While the special needs trust is in existence, the statute of limitations otherwise applicable to claims of the Department of Health Services, Department of Mental Health, and Department of Developmental Services is tolled. Notwithstanding any provision in the trust instrument, at the death of the special needs trust beneficiary or on termination of the trust, the trust property is subject to claims of the Department of Health Services, Department of Mental Health, and Department of Developmental Services to the extent authorized by law as if the trust property is owned by the beneficiary or is part of the beneficiary's estate.

(c) At the death of the special needs trust beneficiary or on termination of the trust, if the trustee knows or has reason to believe the beneficiary received services or benefits from the Department of Health Services, Department of Mental Health, or Department of Developmental Services, the trustee shall give notice of the beneficiary's death or the trust termination as provided in Section 1215, addressed to the director of that department at the Sacramento office of the director. Failure to give the notice prevents the running of the statute of limitations against that department's claim.

(d) The department has four months after notice is given in which to make the claim. The claim shall be paid as a preferred claim prior

to any other distribution. If trust property is distributed before expiration of four months after notice is given without payment of the claim, the department has a claim against the distributees to the full extent of the claim, or each distributee's share of trust property, whichever is less. The claim against distributees includes interest at a rate equal to that earned in the Pooled Money Investment Account, Article 4.5 (commencing with Section 16480) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, from the date of distribution or the date of filing the claim, whichever is later, plus other accruing costs as in the case of enforcement of a money judgment.

(e) If a claim made pursuant to subdivision (d) is rejected, the department making the claim may bring an action against the trust. The action shall be commenced within three months after the notice of rejection is given.

Comment. Section 3605 is new. Section 3605 permits reimbursement from special needs trusts established under Section 3604. Section 3605 does not affect any reimbursement rights that may exist with respect to other trusts, including special needs trusts established pursuant to court order before the operative date of the section to receive damages or settlement proceeds. See also Prob. Code § 15306(b) (right of reimbursement for public social services under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code).

On the death of the special needs trust beneficiary or termination of the trust, trust property may become subject to reimbursement claims under federal or state law. See, e.g., 42 U.S.C. § 1396p(b)(1)(B) (Medicaid); Welf. & Inst. Code §§ 7276, 7513-7513.2 (state hospital costs), 14009.5 (Medi-Cal). For this purpose and only this purpose, the trust property is treated as the beneficiary's property or as property of the beneficiary's estate.

Subdivisions (c) and (d) are drawn from Sections 215, 9202, and 9203. Subdivision (e) is drawn from Sections 9252(c) and 9353(a)(1).

On termination of a special needs trust, the normal rules governing distribution of property are applicable, subject to the claims reimbursement provisions of this section. See Section 15410 (disposition of property on trust termination).

Prob. Code § 3611 (amended). Order of court

3611. In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, provided that (1) the county treasurer has been authorized by the county board of supervisors to handle the deposits, (2) the county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code, (3) the county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money, (4) the county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor, and (5) funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4 of this code; or in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court, and that the remaining balance of any other property delivered or to be delivered be held on such conditions as the court determines to be in the best interest of the minor or incompetent person.

(c) That the remaining balance of any money be paid to a special needs trust established under Section 3604 for the benefit of the minor or incompetent person.

~~(e)~~ (d) If the remaining balance of the money and other property to be paid or delivered does not exceed twenty thousand dollars (\$20,000) in value, that all or any part of the money and other property be held on such other conditions as the court in its discretion determines to be in the best interest of the minor or incompetent person.

~~(d)~~ (e) If the remaining balance of the money and other property to be paid or delivered does not exceed five thousand dollars (\$5,000) in value and is to be paid or delivered for the benefit of a minor, that all or any part of the money and the other property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400) of Chapter 2.

~~(e)~~ (f) If the remaining balance of the money or other property to be paid or delivered is to be paid or delivered for the benefit of the minor, that all or any part of the money and other property be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

Comment. Section 3611 is amended to add subdivision (c) to permit money of a minor or incompetent person to be paid to the trustee of a special needs trust established under Section 3604. Before payment or delivery to the trust, all statutory liens in favor of the Department of Health Services, Department of Mental Health, and Department of Developmental Services must first be satisfied. See Section 3604(d); Welf. & Inst. Code §§ 7282.1, 14124.71-14124.76.