

# THE BEGLEY LAWYER ALERT

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## *Personal Injury Settlement Preservation Trusts*

*By Thomas D. Begley, Jr., Esquire*

Studies show that over 90 percent of the time a person receiving a personal injury settlement dissipates the funds within five years. There are three reasons why this is true. The first reason is that most people are not good money managers. Many people who are victims of personal injuries have never had money and are receiving a large sum at one time. They are often unsophisticated and do not have contacts with professional investment advisors. What to most people would seem a modest sum of money appears enormous to many of these unsophisticated people, and they believe that they can spend without restriction and never exhaust the settlement funds.

The second reason personal injury victims tend to squander their settlements is that many disabled people suffer from low self-esteem and tend to buy friendship by showering people with whom they would like to be friendly with gifts. Often, unscrupulous people learn of the existence of the personal injury settlement and feel that they are entitled to a portion of the settlement. This is particularly true in some family situations. It also could be true with strangers.

The third reason that personal injury plaintiffs exhaust their settlement funds quickly is that many of them are suffering from significant pain and are constantly receiving pain medication. This medication often clouds their judgment and leaves them prey for unscrupulous people.

The real purpose of a Settlement Preservation Trust is to protect the personal injury victim from their own weaknesses and to prevent them from exploitation by others. The trust is irrevocable and, if the recovery is significant, should involve a professional trustee as either sole trustee or co-trustee with a family member. The professional trustee is responsible for managing the lump sum portion of the settlement.

A Settlement Preservation Trust can be used in conjunction with a structured settlement. In this way, the benefits of the structured settlement, including utilization of a rated age and the income tax-free nature of the payments, can be preserved. Despite the existence of the Structured Settlement Protection Act, millions of structured settlement beneficiaries manage to sell their income stream each year. The Settlement Preservation Trust can restrict the sale of the structured settlement income stream by its terms, and the involvement of a professional trustee will make such a factoring transaction both unnecessary and unlikely.

In some cases, the entire settlement can be placed in a Settlement Preservation Trust, but in most instances it may be appropriate for the personal injury victim, assuming they are not receiving means-tested public benefits, to have control over a certain percentage of the recovery with the Settlement Preservation Trust being used as a safety net for the remaining settlement.

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The Firm provides services in connection with protecting assets from nursing home costs, Medicaid applications, Estate Planning and Estate Administration, Special Needs Planning and Guardianships. If you have a legal problem in one of these areas of law, contact Begley, Begley & Bookbinder at 800-533-7227.

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