

From: Lee, Chung-Yiu

Sent: Monday, December 01, 2008 5:46 AM

To: Mason, Joshua J

Cc: Pitts, Sharon M; Forrester, Althea M

Subject: reasonable accommodations request -- special needs trust / 982.352(a)(6) waiver

Hi Joshua:

Althea Forrester asked me to review your inquiry. Our response follows.

The entire analysis hinges how to best interpret the phrase "any interest in the unit" under 982.352(a)(6) as this phrase in the regulation is not further defined or clarified in either its preamble, by another section 8 regulation, handbook or notice. There appears to be no federal or state case law on this issue.

In the absence of any guidance, we analyzed the phrase using its plain meaning. While we concede that the beneficiary generally has no legal right to own or dispose of the trust corpus (*i.e.* the residential property), the beneficiary nevertheless still has a beneficial interest in the home. Typically, the special needs trust instrument will specify that the trust corpus can only be used by the beneficiary. Based upon your e-mail it appears that the trustee (of the special needs trust) purchased the home for the purpose of housing the beneficiary ("The voucher holder in question is a beneficiary under a special needs trust which includes the house in question as part of its trust corpus."). In that respect, the beneficiary has an interest in the home in that only he and his family can live in it and nobody else.

The section 8 regulations do not define the scope or depth of the "interest" in order for § 982.352(a)(6) to apply. But clearly, "**any** interest" (emphasis added) is extremely broad language – it does not require there to be financial interest (which, in this case, we presume the beneficiary does not have) or controlling interest (which we also presume the beneficiary does not have). To have "any interest" is a very low threshold.

Further, the beneficiary may even have a legal right to reside in the home when the trustee purchased the home. Generally, the trustee must manage the assets and provide for the care of the beneficiary. If the trustee purchased the home and DID NOT allow the beneficiary and his family to reside in it, the action of the trustee could be challenged. Thus, this arguably creates for the beneficiary an interest in the property.

Based upon the information you provided we conclude that the beneficiary has an "interest in the unit" and, as a result, the property in question would be ineligible housing.

However, we note that there might be unique circumstances that may warrant a waiver of § 982.352(a)(6), such as in cases of reasonable accommodations requests. While we cannot outline all those possibilities where a waiver might be granted we can give some examples. For instance, if the section 8 recipient needs to live near a hospital or medical facility due to his or her disability and no other affordable unit can be found near

this particular medical facility, or if this home was specifically purchased for the beneficiary/section 8 recipient so as to accommodate his or her medical equipment or other special medical needs, a waiver might be granted.

The reasonable accommodation request that is made must show some nexus between the individual's disability and the house in question. To only argue that the house is part of the disabled individual's corpus is an insufficient legal basis to waive 982.352(a)(6).

If you believe there are specific documentation you think we should review that may impact our conclusion please feel free to contact us.

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