

Trust Planning for Individuals with Disabilities or on Public Benefits

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Today's Presentation

What is a trust and who needs one?

Do's and Don'ts-Advice for your Clients

Practical Tips on Drafting and Administration

Other things you need to know—ABLE and the ACA

Questions and Answers



What is a Trust?



A trust is legal title to property held by one party for the benefit of another.

Beneficiary

The sole person who will benefit from the funds held in trust

Grantor=Settlor

The person who sets up the trust. A trust may be established by the individual, by a court, by a guardian, by a third party, or through a will

Trustee

The person or entity who administers the trust


Special Needs

Supplemental Needs=Disability

Irrevocable

Cannot be canceled

SNTs Defined

- A special needs trust is drafted specifically so trust assets are considered not to be "available resources" in calculating the disabled person's resources.
 - The Social Security Administration describes a discretionary trust as "a trust in which the trustee has full discretion as to the time, purpose and amount of all distributions."
 - If the beneficiary has no discretion over the distributions, the trust is not counted for SSI or Medicaid eligibility.
 - See SSA's Fact Guide for National Trust Training (separate handout)
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Who needs an SNT?

Persons on SSI or Long-term Care/Waiver Medicaid benefits receiving funds exceeding \$2,000:

- Inheritance, back-payments of Social Security, gifts
- Settlements
 - Personal Injury
 - Worker's Compensation
 - Note need for Medicare Set-Aside Trust as applicable
 - Medical Malpractice
 - Divorce
- Liquidation of personal assets
 - Sale of home
 - Excess resources
 - PETI funds

Persons who are preparing to go on benefits (SSI; Medicaid)

Persons unable to personally handle sums of money or may be vulnerable to exploitation.

Persons who may receive benefits in the future.

- example: Springing/Trigger Trust
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Planning for Future Needs- Advice for your clients

Do plan early

It is never too early to start the process of planning for the future needs of a person with a disability. From setting up a life insurance policy correctly, meeting with an attorney or applying for government benefits, getting started with this process will give your clients peace of mind.



Planning for Future Needs- Advice for your clients

Do interview potential trustees

Whether it be a family member, close friend, non-profit, professional fiduciary or bank to serve as a trustee, your client will benefit by a face-to-face meeting to discuss their family member's needs. It is important to discuss how the person/organization might be able to fit your vision for the administration of the trust. Family members need to decide for themselves if they are willing to take on the complexities of administering a Special Needs Trusts.

Planning for Future Needs- Advice for your clients

Do understand the difference between 1st and 3rd Party Trusts

If your clients are planning now for funding a trust for your child with HIS/HER assets, then this is a 3rd Party trust. The biggest difference between a 3rd party trust and a 1st party trust is that the funds in a 3rd party trust can pass to other children or family members when the primary beneficiary dies.

Types of Supplemental Needs Trusts

Supplemental Needs Trust (SNT) (also called Special Needs Trusts, Disability Trusts, d(4)(a) and d(4)(c) Trusts).

Types of Special Needs Trusts:

- **First Party Individual Trusts**
 - Subject to Medicaid approval
 - Can be created by Court, parents or guardian of beneficiary
 - Payback provisions on death or termination of trust
 - Income taxable to beneficiary

- **Third Party Individual Trusts**
 - Settlor/Creator = third party (inter vivos or testamentary)
 - No payback provisions
 - More flexibility

- **Pooled Special Needs Trusts (1st and 3rd Party)**
 - Master trust document
 - Can be self created
 - Income may not be taxable

Special Needs Trust Comparison

	Individual (First Party) Private Trust 42 USC § 1396p(d)(4)(A) C.R.S. § 15-14-412.8	Pooled (First Party) Trust 42 U.S.C. §1396p(d)(4)(c) C.R.S. § 15-14-412.9	Individual Third Party Private Trust	Pooled (Third Party) Trust
Administration	Family member, professional fiduciary, bank	Non-Profit organization	Family member, professional fiduciary, bank	Non-Profit organization
Age	Must be under 65	No age restrictions per se, but at the age of 65 and over the Beneficiary must be reasonable able to spend down the funds in their expected lifetime.	Can Be of any age	Can be of any age
Transfer Penalty	None	Maybe under some circumstances for persons over age 65. None for persons under 65.	None	None
Annuities	Must name Medicaid as a beneficiary	Trustee may be named as a beneficiary	Do not need to name Medicaid or trustee as a beneficiary	Do not need to name Medicaid or trustee as a beneficiary
Definition of Disability	Must meet definition of disabled for the purposes of the SSI program	Must meet definition of disabled for the purposes of the SSI program	ADA definition is used	ADA definition is used
Tax Status	Earnings taxable	Earnings taxable	Earnings taxable	Earnings taxable
Distributions	Supplemental Needs for the Sole Benefit of the Beneficiary	Supplemental Needs for the Sole Benefit of the Beneficiary	Supplemental Needs for the Sole Benefit of the Beneficiary	Supplemental Needs for the Sole Benefit of the Beneficiary
Costs	Set up by private attorneys, cost varies. Administration costs vary	No attorney fees. Non-profit sets fees to establish and administer	Set up by private attorneys, cost varies. Administrative cost vary	CFPD: Cost to set up is \$250.00 plus 2% of amount contributed to establish trust fund. 1% annual; Case Mgmt fees
Remainder Interests (when Primary Beneficiary dies)	Medicaid must be paid first.	Will be paid back to the State Medicaid Agency to the extent it is not retained by the pooled trust.	A beneficiary can be named. (Medicaid has no claim on third-party funds)	A beneficiary can be named. (Medicaid has no claim on third-party funds)
Portability	May need to pay back Medicaid if moved out of state or terminated from Medicaid benefits.	Trust is for life. Can move to any state with similar law of pooled trusts or "ported" to new pooled trust.	Trust is for life. Can move to any state with similar law	Trust is for life. Can move to any state with similar law of pooled trusts or "ported" to new pooled trust.
Medicaid Approval	Must be approved by Medicaid in all non-SSI cases.	Pre-approved by Medicaid, but Medicaid must be notified.	Must be approved by Medicaid in all non-SSI cases.	Pre-approved by Medicaid, but Medicaid must be notified.
Social Security	Must approve all SSI cases.	Pre-approved by SSA, but SSA must be notified.	Must approve all SSI cases.	Pre-approved by SSA, but SSA must be notified.
Flexibility	Depends on document.	Streamlined process in place.	Depends on document.	Streamlined process in place.

Planning for Future Needs- Advice for your clients

Do encourage your clients to write a comprehensive letter of intent

The Grantor's letter of intent is a non-legal document that gives guidance to the trustee about how you wish the funds to be spent. It is your client's opportunity to tell the trustee about the importance of continuing to pay for certain services or items and what to avoid while keeping in mind the unique needs of the beneficiary.

Planning for Future Needs- Advice for your clients

Do consider when to fund the trust
During lifetime or upon death?

Pros/Cons



Planning for Future Needs- Advice for your clients

Do not create unrealistic expectations

The trust should be funded to support your client's family member at the same level you supported them during your lifetime.



Planning for Future Needs- Advice for your clients

Do not forget to tell other family members about the trust

It is important to share information about the trust with multiple family members, including parents and grandparents, so they can contribute to the same trust. This decreases the costs of administration when the funds are all in the same place.



Planning for Future Needs- Advice for your clients

Do not focus only on the trust

When you meet with your clients, encourage them to look at Powers Of Attorney, Wills, Estate Planning, Guardianship, and titling of assets in addition to drafting the trust.



What an SNT can pay for



RECREATION



Vacations

Companionship Services



Entertainment

Subscriptions



Memberships

Pets

Cable TV



MEDICAL CARE (NOT COVERED BY BENEFITS)

Dental Work

Glasses

Hearing Aids

Massage

Hair Care

Co-Pays

Personal Supplies

Vitamins/Supplements



What an SNT can pay for



HOUSEHOLD

Home Purchase

Home Maintenance

Clothing

Telephone

Appliances

Furniture

Home Insurance

Accessibility Upgrades



TRANSPORTATION

Public Transportation

(Bus Passes, Light Rail, Etc.)

Vehicle Purchase

Vehicle Maintenance

Gasoline

Auto Insurance



What an SNT can pay for

EDUCATION



Public/Private Education

Training

Computer



Software

Books



Vocational Training

SERVICES

Attorney Fees

Alternative Therapies

Guardian Fees

Conservator Fees

Burial Plan




Practical Tips for Drafting SNTs

- Third Party SNT named as beneficiary of IRA
 - Qualified Designated Beneficiary
 - Beneficiaries are identifiable
 - Trust must be able to accumulate distributions
 - Ensure distribution over special needs beneficiary life
 - Tip – no trust beneficiaries older than special needs beneficiary
 - No distributions from trust IRA proceeds for settlor’s debts, estate administration or estate taxes
 - Tip – specifically identify special needs sub-trust as IRA beneficiary
- Benefits must be discretionary and not enforceable
 - Never use enforceable distribution standards
 - NOT “Support, health and maintenance”



Practical Tips for Drafting SNTs, cont.

- Spendthrift Clause
 - Ensure assets are not available to beneficiary or creditors
 - Pay attention to “Boiler Plate” Provisions
 - No early termination for small trust
 - Limit distributions from parents revocable trust during life to special needs dependent
 - Exclude beneficiary from contingent trust provisions for grandchildren/disabled beneficiary
 - What if beneficiary is no longer on public benefits?
 - Terminate trust?
 - Discretionary trust?
 - Continue SNT?
 - Loan provisions for responsible/capable beneficiary?
 - Power to hire case managers and consultants
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Trust Advisors, Protectors and Co-Trustees

- Trust advisors can be family members, attorneys, accountants or other trusted professions
 - Fees vary, but if there is a family member trustee, trust advisor fees may be more economical
- Trust Protector
 - This is usually an attorney or other professional to oversee a trust and to change trustees if there is a need to. Usually quite inexpensive to have one in a more sizable trust (over \$100,000).
- Co-Trustee
 - Consider a family member acting as co-trustee with a professional trustee.

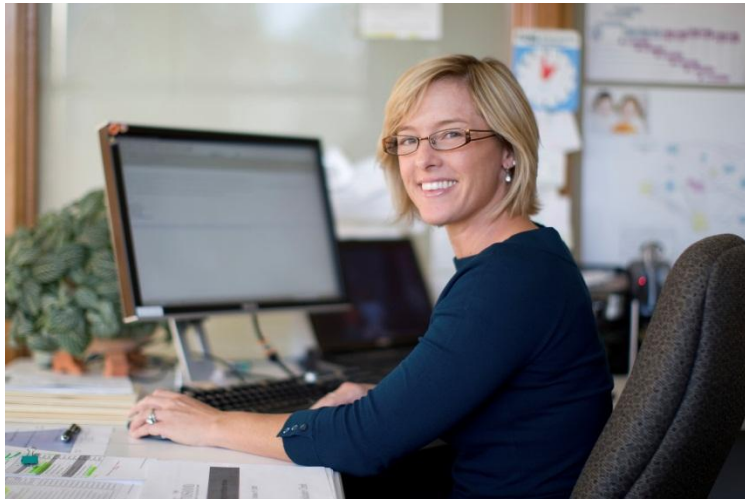


Practical Tips for Trust Administration

- The unique benefit structure of each individual must be evaluated
- Input from the “team” is considered
- Trustee has sole and absolute discretion
- Balance of independence and limitations of regulations




Practical Tips for Trust Administration



- All allowable bills are paid by the trustee
- Trustee or beneficiary use of VISA when possible
- Gift cards must be used with caution
- Utilize on-line purchases when possible
- Travel is often a challenge
 - Companion preferred
 - Fleet fuel card
 - Pay in advance (airfare, hotel, etc.)
- Disbursement for minors must be considered very carefully.

ABLE-A Better Life Experience

10 quick facts

1. A Better Life Experience (ABLE) was passed in the US Congress and **signed into law Dec, 2014.**
 2. ABLE has to then be passed in each state. **In CO**, the enabling legislation has been brought forth by College Invest. It breezed through the House and Senate and is set to be signed by the governor.
 3. ABLE is kin to 529 plans. It is now **529a of the Internal Revenue Code.**
 4. ABLE is limited to people with disabilities who were **disabled before the age of 26.** However, they may contribute at any age.
 5. **Individuals with disabilities, their family and friends** can contribute to **ONE account** for each individual.
 6. **Annual contributions** (from all sources) are limited to the gift tax amount, currently \$14,000 in 2015.
 7. **The total value of the account** cannot exceed \$100,000 for SSI recipients and \$350,000 for all other account holders in Colorado.
 8. **Distributions** are different than SNT's. They must be related to the individual's blindness or disability. Allowable expenses: Education, Housing, Transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and admin services, legal fees, expenses for oversight and monitoring, funeral and burial. (Note, no vacation, recreation is limited, etc.)
 1. **Housing for SSI Beneficiaries** will either be considered In Kind Support and Maintenance (1/3 reduction) or will not be allowed at all.
 9. The **account holder manages their own distributions.** The administrator (like College Invest) has no discretion.
 10. **The remainder is paid to Medicaid** (even third party contributions) upon the death of the beneficiary.
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Affordable Care Act and the Impact on Special Needs Trusts

What is NOT changing with the implementation of the ACA? (Why a trust is still needed)

- The Medicaid Waiver Program will remain the only real benefit program that will cover significant custodial home care services for people with disabilities.
- Long-term care in Assisted Living Facilities and Nursing Facilities will still be paid by Medicaid when an individual does not have Long-Term Care Insurance, or income/resources to privately pay.
- Supplemental Security Income (SSI) will continue to have a resource limit of \$2,000 for individuals.

When a trust *may* not be needed?

- When an individual who meets the **income** requirements for Medicaid Expansion and does NOT need Long-Term Care or a Waiver program receives a windfall (PI Settlement, Back-payment in SSA, Inheritance), as there is no asset test for the Medicaid Expansion Service.
- Individuals need to evaluate their eligibility for other programs such as LEAP, Food Stamps, etc.
- Individuals need to evaluate the other benefits of placing funds in a Special Needs Trust
 - Budgeting – provides a plan for spending or saving to reflect your goals
 - Protection from exploitation
 - Provides a link to a network of community partners and resources



Answers

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