

**SPECIAL NEEDS TRUSTS (SNT's)- A PRIMER** [11/8-9/2018]

Q. What is a special needs trust?

A. A special needs trust is a legal document (or a provision within a legal document) that provides for financial care for a person with "special needs" who may be receiving, or may be eligible one day, for means-tested public benefits. Or, the special needs trust is intended for a person of financial means, but one who is incapable of handling the funds.

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Q. What is a 3<sup>rd</sup> party SNT?

A. A 3<sup>rd</sup> party SNT is one that is established by someone (the Settlor) with the Settlor's funds. The Settlor is the 3<sup>rd</sup> party.

Example: Mom & Dad make provisions under their Last Will(s) & Testament, or under their Trust(s) for a Trustee to manage their funds on behalf of their disabled child.

Q. How is a typical 3<sup>rd</sup> party SNT designed?

A. (1) The SNT can be written into one's Last Will & Testament as a "death provision."  
(2) The SNT can be written into one's Living Trust (whether revocable or irrevocable) as a "death provision."

(3) The SNT can be a "free-standing" Living Trust (whether revocable or irrevocable) - These are established when there are affluent relatives who may want to bequeath funds to a disabled family member.

Example: Parents set up a SNT for their disabled child under their estate planning documents, but their SNT does not come into being until the parent(s) die(s). Meanwhile, other relatives, e.g., grandparents, want to be assured that their disabled grandchild receives funds that go into a SNT. So, rather than the grandparents creating a SNT as a death provision in their estate documents (like their adult children), a free standing SNT is established - it comes into being right now. Grandparents can name that SNT as the death beneficiary for their grandchild. Parents can name that SNT as the death beneficiary for their grandchild. Aunts/Uncles, etc. could also name that SNT as the death beneficiary for a niece or nephew.

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Q. What is a 1<sup>st</sup> party SNT?

A. A 1<sup>st</sup> party SNT is one that is established with the funds of the disabled individual. This typically occurs when a family member dies and has left a bequest to the disabled individual whose means-tested public benefits are now in jeopardy. Alternatively, the disabled individual could settle or win a lawsuit for which the proceeds will also jeopardize means-tested public benefits.

Q. Are there different types of 1<sup>st</sup> party SNT's?

A. Yes - There is the d4A SNT and the d4C SNT (pooled trust).

Q. Explain a d4A SNT

A. A d4A SNT is established by any of the following: the individual beneficiary, the parents, the guardian, or the Court (Settlers). A Trustee or a series of trustees must be selected. Many times a financial institution is named as a Trustee because they will never die. If they change names, provisions will address that issue in the legal documents. These d4A SNT's usually required Court approval. These d4A SNT's are usually for large sums of money. This is an irrevocable trust which has a mandatory pay-back to the State(s) for services covered by the State at the time of the beneficiary's death.

To summarize:

- For d4A trusts a beneficiary must be under the age of 65 at the time the trust is established
- The beneficiary's Trust Account must be established for the sole benefit of the beneficiary by a parent, grandparent, legal guardian of the beneficiary, or the Court.

Q. Explain a d4C SNT (a pooled trust).

A. A d4C SNT already exists - there are multiple non-profit companies that administer pooled trusts, where they "pool" multiple individuals assets, but keep the accounts separate. The Trustee is the pooled trust non-profit company. So, the client does not have to pay high legal fees to have the Trust document drawn up. They do not have to figure out who will be the Trustee.

There is a joinder agreement (a contract) between the pooled trust company and the individual beneficiary. This is an irrevocable trust, but each pooled trust company has a different policy as to pay-back to the State at the time of the beneficiary's death. NOTE: If an individual is over age 65 and on SSI, a pooled trust cannot be established (or funded anymore after age 65).

To summarize:

- The Trust is established and maintained by a non-profit association.
- The Trust is funded with assets and/ or income which belong to the Individual
- The Trust account may be established by a parent, grandparent, legal guardian of the Beneficiary, the Court, or by the individual Beneficiary - any one of whom may sign the Joinder Agreement.
- A separate account is maintained for each beneficiary of the Trust for prudent investment and management purposes. The Trust funds may be pooled into one account.
- To the extent that any funds remaining at death are not retained by the Trust, the State must be reimbursed for the amount of medical assistance paid by the state for the benefit of the individual.
- The Pooled Trust Agreement must be irrevocable.
- The income and assets of an individual with a disability may be managed by a not-for-profit association. So, a Pooled Trust can be used in lieu of a QIT (Qualified Income Trust) for eligibility purposes.
- The Beneficiary's Sub-Account must be established for the sole benefit of the Beneficiary

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