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Special Needs Trusts (SNT)

A SNT is a trust designed to allow a person with a disability to qualify for needs-based public benefits, like SSI and Medi-Cal, when that person meets the medical requirement but has income or assets that exceed the income or resource limits for such programs.

How do SNTs work?

When assets are placed in a special needs trust, a trustee takes ownership and control over the assets while the beneficiary retains the "beneficial interest" in those assets. The special needs trustee has complete discretion over how the assets are invested and how much of the assets are distributed. Generally, however, the trustee may make only those distributions that "supplement the special needs" of the beneficiary. (Trustees are also held to a high standard of care and accountability in managing and investing trust assets.)

Generally, "special needs" include anything but food and shelter. Hence, they include medical services and equipment not covered by Medi-Cal (or Medicaid), computer, telephone, television, and cable fees and costs; hobbies, exercise, and sports equipment, fees and costs, and costs for entertainment, personal care, cultural enrichment, transportation, and the like. Clothing is also included in items that qualify as special needs. "Special needs" may also include "basic" needs for food and shelter if the trustee determines that the beneficiary's basic needs are not adequately being met by the level or kind of public or other benefits the beneficiary receives. "Special needs" may also include basic needs if support for such needs is not available, for instance, because public or other benefit programs terminate; program standards change; or the beneficiary's earnings, unearned income, or assets, cause the beneficiary to become ineligible.

NOTE: Some trusts prohibit distributions that cause a reduction of public benefits. A trustee who anticipates making discretionary distributions for a special needs beneficiary's food or shelter (including water, utilities, garbage, and property tax), or medical care should consult with qualified counsel about what the trust allows and the effect of such distributions on the beneficiary's entitlement to public benefits.

Because the trustee, not the beneficiary, controls distributions, Social Security, Medi-Cal, and some other public agencies do not count assets placed in SNTs when determining a beneficiary's program eligibility.

Different kinds of SNT's

There are two main kinds of SNT: those established with the beneficiary's own funds (a "first party" trust) and those established with someone else's funds for the benefit of an individual with special needs (a "third party" trust). In addition to their different sources of funding, first and third party trusts differ in that first party trusts require "payback provisions," , which are defined below, whereas third party trusts do not.

There are other key differences between first and third party SNTs. First party SNTs may benefit only the special needs beneficiary (the person whose assets fund the trust) whereas third party SNTs, depending on how they are worded, may be designed to benefit others as well, for instance, the beneficiary's children, spouse, or siblings. Additionally, the person who settles or funds a third party special needs trust may retain the right to revoke or amend the trust. The right to amend or revoke a first party SNT is much more limited (though generally possible with proper legal assistance).

SNTs also differ in how they are managed. Both first and third party SNTs can be independently invested and managed or the trust funds (and management) may be "pooled."

"Payback" Provisions

Whether it is independently managed or pooled, a "first party" SNT - that is, a SNT that is funded with the beneficiary's own assets - must have a "payback" provision. A payback provision is special language in the trust itself that directs the trustee on the death of the beneficiary or early termination of the trust to reimburse the state for medical services the state provided the beneficiary during his or her lifetime. Such medical services include services provided by Medi-Cal or other states' Medicaid programs. They do not include SSI or any other benefits.

The payback requirement may preclude a beneficiary from passing assets on after death to his or her heirs. In most cases, that limitation is less important than the ability to exempt the assets so that the beneficiary can have the benefit of the trust and receive SSI and Medi-Cal during life.

Third party SNT's - trusts set up by someone other than the beneficiary (i.e., parents through their estate plan) and funded by a third party have no payback requirements. Assets remaining in the trust on the beneficiary's death are distributed according to the wishes of the third party who establishes the trust.

The Court's Role in Establishing SNTs

Whether a court must be involved in establishing or supervising an SNT depends on the kind of SNT being established and how the trust is set up.

A court need not be involved either in setting up or in managing a third party SNT. Thus, parents or others may establish an SNT for the benefit of their disabled child or loved one as a part of their estate plan or independently. However, there are restrictions on spouses establishing SNTs for each other that will require consultation with an attorney.

A person with disabilities who has sufficient mental capacity may transfer his or her own assets into a SNT without court involvement or ongoing supervision, if that person has a parent or grandparent alive who can act as the trust maker. The federal and state laws seem arbitrary on this point, but no one besides a biological parent can exercise this authority to create a SNT for a person with a disability that is to be funded with the beneficiary's own funds.

If a mentally competent adult has no surviving parent or grandparent to assist in the process, if the beneficiary does not have sufficient mental capacity to authorize establishment of a trust with his or her own funds, or if the beneficiary is under a court conservatorship or guardianship, then a court must be involved in establishing a special needs trust with the beneficiary's own funds. If the beneficiary is a minor or otherwise lacks capacity or if the beneficiary is under a conservatorship or guardianship, the court will most likely supervise the trust, requiring regular accountings by the trustee.

SNT and the Beneficiary Who no Longer Requires Public Benefits

To exempt the assets of the trust for purposes of qualifying the beneficiary for needs-based public benefits like SSI and Medi-Cal, the SNT beneficiary must be prohibited by the terms of the SNT from having the right to terminate the trust and take personal charge of the assets. While the beneficiary may not terminate either a first or a third party SNT, a third party SNT may be revocable by the trust maker. Further, California law provides for the modification or termination of irrevocable trusts under appropriate circumstances; to do so typically requires a court order. If the trust to be terminated is a first party SNT, the termination will trigger the payback provision discussed above. To avoid triggering the payback, it may be appropriate to continue to hold and administer the assets for the beneficiary in trust even when the beneficiary no longer needs or qualifies for public benefits.

Is a SNT Right for You?

Whether a special needs trust is right for you or your loved one depends on many factors, including the source and amount of funds, the availability of parents or grandparents and a knowledgeable trustee, and the competence, feelings and overall health and needs of the beneficiary. We welcome your questions about establishing, administering, terminating and defending SNTs. We also can assist with the changing of trustees and some litigation regarding fiduciary abuse and breach of trust.

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