

Supplemental Needs Trust: Overview

- A SNT is a special type of trust specifically recognized by federal law in many states.
- The trust benefits a disabled beneficiary who is receiving government assistance.
- The existence of the trust assets do not count as an “available resource” for the beneficiary.
 - Thus, the eligibility for government benefits of the beneficiary can be preserved...
 - While the trust resources can still be used to benefit the beneficiary in other ways

Supplemental Needs Trust: Key Provisions

- The trust must evince a clear intent that the trust assets are intended to “supplement, and not supplant,” government assistance to the disabled beneficiary.
- The trust may be used only to pay expenses that would not otherwise be paid for by government assistance programs.
- The trust may be allowed to spend assets on behalf of the beneficiary for other purposes, such as leisure, education, entertainment, household items etc.
- Upon the death of the beneficiary, the trust assets may be distributed to anyone else, such as the beneficiary’s or grantor’s heirs.
 - Subject to the “payback” requirement discussed later

Two types of Supplemental Needs Trusts

- Self-settled supplemental needs trusts
 - Funded by the disabled beneficiary or with assets that the disabled beneficiary is entitled to
 - E.g., proceeds from a lawsuit brought on behalf of the disabled person
- Third party supplemental needs trusts
 - Funded by anyone other than the disabled beneficiary
 - With assets that the beneficiary is not entitled to
 - A testamentary SNT is almost always a third party SNT

Third Party Supplemental Needs Trusts

- Similar to most third party irrevocable spendthrift trusts
- The trustee should not be given the authority to pay for healthcare, housing and other expenses that would otherwise be paid for by government assistance
- The beneficiary should not have any control over the trust assets
- Even when the conditions are not met, a court can *reform* a trust to allow it to qualify as a SNT

Self-Settled Supplemental Needs Trusts

- All the same requirements of a third party SNT apply PLUS some restrictions added by federal law:
 - To be effective, the SNT must be established by the disabled beneficiary or his or her parent, grandparent, guardian or by a court
 - The disabled beneficiary must be under age 65
 - The trust must have a “payback” provision
 - After the death of the beneficiary, the trust must use what resources it has left to repay the state for the funds it used on behalf of the disabled beneficiary

Sole Benefit Requirement

- Third party SNT may have beneficiaries other than the disabled beneficiary
- Self-Settled SNT *cannot* have beneficiaries other than the disabled beneficiary
 - All expenditures from the trust must be reasonably necessary for the disabled beneficiary's benefit
 - This is to protect the state's "payback" interest following the death of the beneficiary
 - Therefore, the state has the right to review a self-settled SNT to make sure that it only pays expenses necessary for the beneficiary

Qualified Income Trust

- Also known as the “Miller” Trust
- Most SNT’s are to protect principal assets, not future income of the disabled person. This trust seeks to protect the consistently generated income of the disabled person.
 - Even while receiving the government benefits
- Holds *income* of a disabled person from pensions or social security that exceeds the limit for Medicaid eligibility
- Requirements of the trust are similar to the SNT,
 - No under age 65 requirement, though
 - There is a “payback” provision requirement, as in a self-settled SNT

Pooled Trust

- Established by a non-profit organization
- Many disabled beneficiaries “pool” their income in a big trust
- Each disabled beneficiary has a separate account
- The organization may use assets for the beneficiary’s supplemental needs
- After the beneficiary’s death, the assets can:
 - Be used to pay back the government OR
 - Remain with the charitable organization
 - So, there is NO required “payback” provision!

Transfers to Supplemental Needs Trusts

- Transfers to a SNT generally have the same gift tax and Medicaid eligibility consequences as a transfer to any trust.
- However, a transfer to a SNT does NOT cause a 5 year period of ineligibility if:
 - The beneficiary is under 65 years old
 - Unless the beneficiary is a spouse or child of the grantor, in which case there is no age limit
 - The gift must be for the “sole benefit” of the beneficiary
 - The gift must be of an amount that, based on sound actuarial data, will be consumed over the remaining life of the disabled beneficiary
 - This requirement doesn't exist if there's a payback provision
- Posthumous gifts to a SNT may be exempt from “estate recovery” in some states.