Special Needs Trusts

Peak Trust Company

Elevated Trust & Wealth Management Solutions

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Defined

A special needs trust ("SNT") is a privately and professionally managed trust set up by one or more persons, called grantors, for the benefit of a person with disabilities or other impairments. The SNT is administered and managed by a trustee. Ideally this trustee will be an experienced professional fiduciary, such as a trust company. In addition to being created by individual grantors, SNT's can be formed out of litigation proceeds payable to a disabled beneficiary, including lump sums and annuity payments. If drafted and administered properly, a SNT can be used to supplement government benefits, such as Supplemental Security Income ("SSI") and Medicaid, and will not disqualify the beneficiary from receiving these "means tested" government benefits.

What to consider when setting up a Special Needs Trust

- Whether the beneficiary's assets and other resources are likely to cover the full cost of their lifetime needs, or whether government benefits should help fund such needs.
- Even if a beneficiary does not financially need to rely on Medicaid for health insurance or on SSI for the monthly payments, the beneficiary may need to be "Medicaid- eligible" to participate in beneficial state or local programs, e.g., life skills training. Working with an estate or Medicaid planning professional can help you estimate the beneficiary's future expenses and programs for which they may be eligible.
- Make sure you understand the differences among Medicare, Medicaid, Supplemental Security Income, and Social Security Disability Income. It is possible for a special needs beneficiary to receive benefits from all four programs. Each of these public benefits has different eligibility rules and different sets of covered services. SSDI and Medicare are not based on financial need, while SSI and Medicaid have strict financial requirements. Understanding the eligibility requirements of the particular programs for which the beneficiary presently qualifies, or is likely to qualify for in the future, is critical.
- Include a letter of intent to assist the trustee of the SNT. This provides valuable information concerning the daily life and health care concerns of the beneficiary. This is especially important when a new caregiver has to step in to manage day-to-day activities. The letter of intent also describes the beneficiary's unique likes, dislikes, needs, preferences, and other important information. Additionally, once the SNT is created, the letter of intent should be regularly updated to document any change in care requirements and to ensure the best care of the beneficiary.
- Make sure you review all of the assets and beneficiary designations to make sure no funds or resources pass directly to the beneficiary. All of the

beneficiary's inherited shares of property should pass directly to the SNT. If assets pass outright, SSI, Medicaid, and other means-tested government benefits could be lost. This review should include:

- ❏ IRA, 401(k), and other retirement benefits
- ❏ Life insurance
- ❏ Employer-provided death benefits
- ❏ Annuities and savings bonds

- Select a qualified trustee. During the initial stages of creating a SNT, a trustee will be selected to administer and manage the trust assets for the sole and exclusive benefit of the beneficiary. Preforming the duties of a trustee is a serious mission. This trustee must be able to understand the trust terms, appropriately manage the trust assets and properly apply the trust funds without disqualifying the beneficiary from government benefits. Most importantly, this trustee must be able to fulfill their fiduciary duties, including maintaining undivided loyalty to the beneficiary. For more information, please see our Eight Reasons to Use a Corporate Trustee whitepaper.
- Trusts can be drafted to contain an SNT provision that "activates" if a beneficiary's life circumstances change.

The major difference between a living trust and an irrevocable trust comes down to control.

Duties of SNT Trustee

- Invest the assets of a SNT to reflect the needs, risk tolerances and projected length of care for the beneficiary; risk tolerance tends to be low. SNT funds should be invested to produce an appropriate mix of current income and capital appreciation.
- Make distributions of income and principal "for the sole benefit" of the beneficiary, preferably directly to providers of goods and services to avoid misuse of funds or inadvertent impact on government benefits.
- Reimburse of persons who have expended their own funds for items that are permissible SNT disbursements.
- Coordinate with health care professionals to provide for the current and anticipated needs of the beneficiary.
- Accurate accounting, periodic reporting of receipts and disbursements and provide periodic and accurate accounting that reflect trust expenditures and receipts.
- Verify that SNT distributions do not defray a legal obligation of support owed by another to the beneficiary.

Choosing a SNT Trustee

- Using a professional trustee, like a trust company, is recommended due to the skills necessary to properly administer an SNT. [Individual trustees are unlikely able to afford the high cost of specialized training.]

- Trustee must be capable of recognizing and discharging “regular” fiduciary duties, in addition to undertaking an appropriate ongoing analysis of relevant government programs and the impact of trust distributions on the beneficiary’s eligibility for those programs.
- Corporate fiduciaries are often more cost-effective than an individual, non-professional fiduciary who must separately retain the paid services of investment advisors, accountants, claims processors, bonding agents, etc.
- Some states specifically prohibit parents, guardians or other family members from serving as Trustee. These persons are often remainder beneficiaries of the SNT (or heirs-apparent of the beneficiary).

Glossary of Terms:

Fiduciary Duty: A fiduciary duty is the obligation of the trustee in dealing with the trust property and income. The trustee holds the property solely for the benefit of the beneficiary with due care. The trustee owes duties of good faith and loyalty to exercise reasonable care and skill, to preserve the trust property and make it productive and to account for it. Because the trustee is a fiduciary does not mean that he/she is an agent of the beneficiary.

Trust: A trust is a property interest whereby property is held by an individual or entity (such as a bank) called the trustee.

Trustee: A trustee is a person or entity who holds legal title to property for the use or benefit of another. A trustee has a duty to act in the best interest of the beneficiaries.

Trust Beneficiary: A trust beneficiary is a person for whose benefit a trust exists. A beneficiary does not hold legal title to trust property but does have an expectancy interest in it. The beneficiary receives the benefits of the trust while the trustee administers the trust as a beneficiary.

Trust Principal: The trust principal is the property placed in trust by the grantor which the trustee holds, subject to the rights of the beneficiary, and includes any trust earnings paid into the trust and left to accumulate. Also called “the corpus of the trust.”

For more information on planning with life insurance, please visit the Peak Trust Company website at www.PeakTrust.com or contact one of our knowledgeable team members at (844) 391-2789.