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Special/Supplemental Needs Trusts

Special/Supplemental Needs Trusts ("SNTs") are trusts which are established for persons with disabilities and/or persons receiving government assistance (e.g., SSI, Medicaid) without disqualifying or otherwise making such persons ineligible for such government benefits. To be properly drafted, it must be a discretionary, rather than a support trust. A support trust is simple language which states that the trust funds can be used for health, welfare, and support. This language could be successfully attacked by the appropriate government authority to call for the conversion of the money to replace government benefits. A discretionary trust, on the other hand, is effective because it meets a number of criteria, including its statement that the trust can only be used for purposes not covered by government entitlements and that the discretion to utilize the trust funds lies solely with the trustee, not the beneficiary. There are, in fact, two distinctly different forms of SNTs: one created with funds supplied by a third person (TP) and the other, which is funded with the beneficiary's own funds (BF). Such trusts, when properly drafted, do not affect eligibility for SSI or Medicaid.

Any individual, other than the beneficiary, can place funds into the SNT(TP) for the supplemental and luxury needs of an individual with disabilities or an individual who is otherwise receiving government benefits (the "Beneficiary"). The Beneficiary does not have any right to require the distribution of principal or income from the trust. The trust pays for supplemental needs and luxury items not provided by government entitlements (SSI, Medicaid). The trustee is instructed to pay the providers directly. The trust distributions are, therefore, not deemed to be income to the Beneficiary and the Beneficiary should not be rendered ineligible for SSI and/or Medicaid.

It is recommended that the SNT(TP) be established while the person creating the trust is alive in order to avoid the time and expense of supervision by a probate court. It is often funded with life insurance. This may present an added tax and estate planning benefit which should be discussed with your tax advisor. The SNT(TP) may be approved in advance of death by the Social Security Administration. If the Beneficiary is a recipient of Supplemental Security Income, then the trust should be submitted to the Social Security Administration for approval. The trust is used in conjunction with a pour-over will naming the trust as the beneficiary, and by designating the trust as the beneficiary of a life insurance policy. A creator should carefully review the title of their assets. It is imperative to retitle assets so that the trust can receive the disabled Beneficiary's portion.

Placing funds into an SNT(TP) creates a concrete plan of financial care for the Beneficiary. The creator specifies in the trust agreement how the funds are to be utilized and who is to receive the funds upon the Beneficiary's death. The Beneficiary's own funds must not be placed into a SNT(TP). If so, Medicaid will have the right of recoupment for monies expended from part of the corpus of the SNT upon the Beneficiary's death, and may have the right of recoupment against the entire trust. The Beneficiary can never have any right to personally receive the funds in the SNT, but the trustee should be given the authority to terminate the SNT irrespective of the impact upon the Beneficiary's entitlements.

The SNT(BF) is generally used in personal injury litigation settlements. This type of trust is created with the individual's own assets and, when properly drafted, will protect the assets, permitting the individual to receive both Medicaid and SSI benefits, assuming that the individual is otherwise eligible. Medicaid will be able, and must have the right, to recoup against the trust upon the Beneficiary's death. The use of the funds in this type of trust is also for the supplemental and luxury needs of the Beneficiary.

If the recipient of funds from a settlement or court award of funds is a minor or incapacitated, then there usually needs to be a court order authorizing the creation of the SNT(BF) and the placement of the individual's funds into the SNT(BF). The Social Security Administration is concerned that when parents execute a SNT(BF) for their adult child, in the absence of court direction, that the adult child was not competent. Therefore, the Social Security Administration has stated that it wants clear language that the adult beneficiary transferred his/her funds into the SNT(BF). The Social Security Administration has also stated that when the parents create the SNT(BF) in the absence of court direction, that the parents, to be the creators of the SNT(BF) must transfer some of their own funds into the SNT(BF), even if only a few dollars.

Medicaid may have a lien on the proceeds for Medicaid payments made prior to the establishment of the trust. Notice should be provided to Medicaid prior to questionable expenses. When notice is given to Medicaid, it is more difficult for Medicaid subsequently to complain about expense items for which it received notice. The trust should provide annual accountings to Medicaid. When accountings are provided, the Trustee then reasonably should know what items of expense may be objectionable to Medicaid. After the death of the beneficiary, the Trustee cannot pay for a funeral or other new expenses. The Trustee can, however, pre-pay for a funeral. The Trustee, after the death of the beneficiary, can pay for administration expenses and estate taxes.

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**PERSONAL INFORMATION
FOR PREPARATION OF SPECIAL NEEDS TRUSTS**

Beneficiary's Full Name: _____ **Age:** _____ **DOB:** _____

Other Names Used: _____

Home Address: _____ **City:** _____ **State:** ____ **Zip:** _____

Phone: Home: _____ **Office:** _____ **Fax:** _____ **E-mail:** _____

Medical Diagnosis: _____

Legal status as to capacity (Guardianship? What type? What court, case number, etc.):

Place of Birth: _____ **Citizenship:** _____ **Social Security Number:** _____

SPOUSE (if any): _____

CHILDREN (if any):

Names	Birth Dates
_____	_____
_____	_____
_____	_____

Likes (movies, TV, etc.), hobbies, & activities:

Ability to manage money:

Ability to own a car or other property:

Attendance at day programs or other services received:

Ability to live independently:

Ability to travel:

Need for personal assistance or a unique aid:

Adaptive equipment & the like:

Grantor's Full Name: _____ Age: _____ DOB: _____

Home Address: _____ City: _____ State: _____ Zip: _____

Phone: Home: _____ Office: _____ Fax: _____ E-mail: _____

Place of Birth: _____ Citizenship: _____ Social Security Number: _____

Guardian of Person of Beneficiary (if any):

Home Address: _____ City: _____ State: ____ Zip: _____

Phone: Home: _____ Office: _____ Fax: _____ E-mail: _____

Place of Birth: _____ Citizenship: _____ Social Security Number: _____

APPOINTMENT OF TRUSTEE

Initial Trustee: Bond Waived?: ____ Living Trust?: ____ Testamentary Trust?: ____

Home Address: _____ City: _____ State: ____ Zip: _____

Phone: Home: _____ Office: _____ Fax: _____ E-mail: _____

Place of Birth: _____ Citizenship: _____ Social Security Number: _____

Co-Trustees/Alternates:

Co/First: _____

Home Address: _____ City: _____ State: ____ Zip: _____

Phone: Home: _____ Office: _____ Fax: _____ E-mail: _____

Place of Birth: _____ Citizenship: _____ Social Security Number: _____

Co/Second: _____

Home Address: _____ City: _____ State: ____ Zip: _____

Phone: Home: _____ Office: _____ Fax: _____ E-mail: _____

Place of Birth: _____ Citizenship: _____ Social Security Number: _____

Termination/Distribution upon Beneficiary's death:

Initial Trust Corpus (approximate value & description of funds & property to be placed in Trust):
