

Special Needs Trusts

A trust is an arrangement where one person holds property or assets for the benefit of another person. A Special Needs Trust (SNT) is a type of trust established to set aside funds for a special needs individual while allowing him or her to meet the strict financial qualifications for public benefits programs. A third party SNT holds assets that belong to someone other than the person with a disability (the “beneficiary”). A first party SNT holds assets that belong to the person with a disability/beneficiary.

Who needs an SNT? Parents or others with a special needs loved one who wish to securely set aside funds for that individual can benefit from an SNT. If you are worried about how your special needs loved one will pay for care when you are gone, an SNT may be the right tool for you. Also, an individual with special needs who inherits from a loved one or receives a settlement may need a SNT.

How does an SNT help my family? An SNT allows you to set aside funds for your special needs loved one without risk of those funds disqualifying him or her for certain Social Security/ Medicaid/TennCare benefits. The assets in the trust are not counted for purposes of financial qualification by public benefits programs. This allows the special needs individual to use SSI/Medicaid/TennCare benefits to pay for their most essential needs while paying for supplemental services, such as vacations, education, and other perks, out of the SNT.

Who manages the SNT? The SNT is managed by a “trustee,” who is in charge of deciding how to invest the assets in the trust and whether to pay for needed items or services from the trust. The trustee is legally obligated to follow the rules of the trust and cannot be forced by the beneficiary to distribute funds improperly. This makes SNTs a wonderful way to manage funds for a beneficiary who is not capable of handling money or someone who may be preyed upon by others.

What happens when the SNT beneficiary dies? When the beneficiary dies, the third party SNT can be used to pay for the beneficiary’s final expenses if these are not already secured. Then funds in the SNT are distributed according to the terms of the trust. Public benefits programs do not have a right of reimbursement from the third party SNT. The rules are different for a first party SNT. For those trusts, the public benefit program receives money from the trust in payback once those claims are paid. Any remaining funds in the SNT are distributed according to the terms of the trust.

Who can set up an SNT? It depends on the type of trust that is being set up. Parents, grandparents, conservators and courts set up most first party trusts. Trust laws and public benefits rules are complicated, so you should not try to set up an SNT without proper advice. Contact a qualified and experienced attorney who is familiar with Special Needs Trusts and public benefits programs to learn if an SNT is right for your family.

I thought my loved one couldn't legally sign documents? Historically, special needs families have been led to believe conservatorship is inevitable and unavoidable. Recent Trends in Special Needs Law promote evaluating the individual's legal capacity and empowering the person to sign power of attorney documents, customized to the individual's capabilities and needs, in lieu of automatically becoming the subject of court-controlled conservatorship proceedings.

SELF-SETTLED TRUSTS: MANAGING SETTLEMENTS AND INHERITANCE FUNDS

A person with special needs may be in a position to receive a lump sum payment, such as personal injury damage awards, that could disrupt health insurance coverage or other vital benefits. Establishing a self settled Special Needs Trust (SNT) can protect the continuation of benefits while preserving the funds for the person's supplemental needs and quality-of-life improvements. There are different types of self settled SNTs that may be used depending on the circumstances.

d4A Special Needs Trust

Who needs a d4A SNT? Often referred to as a "self-settled trust", the d4A is a good option for a person with disability who is under age 65 and has recently obtained assets that could threaten access to benefits. They may have received a settlement or award from a personal injury suit or an inheritance from a family member who did not plan using a third-party SNT.

Who creates a d4A SNT? A d4A SNT may be created by a parent, grandparent, conservator, court, or the individual with the disability. The person with special needs may establish the trust himself or herself or via a General Durable Power of Attorney.

Who manages a d4A SNT? Funds in a self-settled trust can be managed by a trusted family member or professional. The key is choosing a trustee who is capable of managing the trust according to state and federal law.

d4C Special Needs Trust

Who needs a d4C SNT? Often referred to as a "pooled trust," the d4C SNT is a good option for a person with a disability who is under age 65 and doesn't have a relative or trusted friend to serve as a trustee. A pooled trust holds and manages funds belonging to multiple beneficiaries rather than a single person.

Who creates a d4C SNT? A D4A SNT may be created by a parent, grandparent, conservator, court, or the individual with the disability. The person with special needs may establish the trust himself or herself or via a General Durable Power of Attorney. Rather than creating an entirely separate trust in the individual's name, the person with disability "joins" a trust that is already established by a nonprofit organization.

Who manages a d4C SNT? Funds in a pooled trust are managed by a nonprofit organization rather than an individual who has a relationship with the person with special needs.