

WHEN IS A TRUST A “SPECIAL NEEDS TRUST”?

Janet L. Lowder, CELA

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“Special Needs Trust” (SNT, sometimes called a “supplemental needs trust”) is a generic term for a trust designed to supplement the means-tested government benefits of a beneficiary with a disability. If you think that none of your clients or their adult children would ever need government benefits, think again. By maintaining eligibility for cash income and health insurance, a family may stretch its collective resources to care for the individual with disabilities over time.

What would prompt someone to establish a SNT? See if you recognize your client: a father is planning his estate and you discover he has a nine-year old with cerebral palsy or a 22-year old who is bipolar; a successful plaintiff in a personal injury action has a permanent disability and will lose his employer-provided health insurance; a spouse or child in a divorce case has multiple sclerosis or severe attention-deficit/hyperactivity disorder (ADHD), and support payments will reduce his or her SSI; an aged or disabled widow is trying to become eligible for Medicaid.

Remember that not all benefits are “means-tested,” just Medicaid and SSI (not Medicare or Social Security disability or retirement). SNTs can be living trusts or testamentary, stand-alone or part of a will or trust. They may be self-settled (so-called “d4A” trusts or “Medicaid Payback Trusts” – you may also have heard about the local CFMF Pooled Trust). At the beneficiary’s death, any remaining funds go to reimburse the state. A third-party SNT (usually wholly discretionary, with no payback provision) is typically set up by a parent or grandparent to hold a disabled beneficiary’s share of the estate.

Finding the right Special Needs Trust can preserve government benefits so that the beneficiary experiences a net gain and the funds (whether their own or from another person) make a real difference in their life, instead of simply relieving the government of its responsibility to pay benefits.

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