

Supplemental Needs Trusts

Gulf Coast Estate Planning Conference

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Overview

- Primarily for individuals that presently or may be expected to qualify for Supplemental Security Income (SSI) and Medicaid.
- What are SSI and Medicaid?
- In Alabama and in many other places, if you qualify for SSI, you qualify for Medicaid.
- SSI is means tested. The Goal is to provide a *minimum* of \$794/month.
- Income Limits (Active vs. Passive Sources of Income)
- Asset Limits (Exempt or Non-countable assets vs Countable Assets)
- Assets held in a SNT (and income generated by a SNT) do not disqualify the named disabled beneficiary of the trust from public benefits so long as the trust meets a few essential requirements and it is administered properly.
- AL Code Sect. 19-3B-1101. 42 U.S.C. Sect. 1396p(d)(4)A or C

Types of SNTs

- **1st Party**

- Did the beneficiary have the right to possession of the funds prior to the act establishing the trust?
- May be established by the beneficiary or someone else (like a parent or grandparent.)
- Could include child support or a judgment award from a lawsuit

- **3rd Party**

- Did the beneficiary have the right to possession of the funds prior to the act establishing the trust?
- Established usually by the person contributing the funds

Requirements

- 1st Party
 - Beneficiary must be sole beneficiary
 - Must be under age 65. No. Add'l funds after 65.
 - Must be irrevocable.
 - Disbursements must be purely discretionary
 - Disbursements only for supplemental needs
- 3rd Party
 - Disbursements must be purely discretionary
 - Disbursements for supplemental needs but sometimes more generous.

Trustee Powers (and Duties)

- Make Appropriate Distributions (ie NOT Food and Shelter) from the Trust (CFR 416.101 *et seq.*)
 - Educational expenses (tuition, books, tutoring)
 - Therapy
 - Medical services not covered by Medicaid.
 - Phone/Cable bills
 - Recreation and entertainment (vacations, including the cost of bringing caretakers along, summer camps, etc)
 - Clothing
 - Vehicle insurance, maintenance, gas
 - Household furniture
 - Durable medical equipment
 - Care management and sitting services
 - Computer/Television
- Invest Trust Property Appropriately
- Bookkeeping
- Tax Reporting
- Communication

Tax Treatment

- Three possibilities.
 - The beneficiary pays tax
 - Someone other than the beneficiary pays tax
 - Trust pays the tax.
- Consider the means available to various persons.
- Consider larger estate planning goals (3rd party SNT only).
- Don't be afraid of making the trust taxable.

Special Problems Creating the Trust

- Who is the Trustee?
- Who is the Grantor?
- Who is the Primary Beneficiary? Who is the Remainder Beneficiary?
- Should I Establish More than One Trust?
- Coordinating with the Courthouse
- Coordinating with Medicaid

Preserving Benefits Eligibility

- Do not mix 1st and 3rd Party Trusts.
- Keep Good Records!
- Beware “In Kind” Payments of Shelter and Food.
- Never Give Cash or Cash Equivalents.