

SPECIAL NEEDS TRUSTS

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A TYPICAL ESTATE PLAN

- Last Will and Testament
- Revocable Living Trust
- Financial Power of Attorney
- Medical Power of Attorney
with Advance Medical Directive
and HIPAA Authorization

TYPES OF TRUSTS

- *Inter vivos*
- Testamentary
- Revocable
- Irrevocable

CODE OF VIRGINIA

- Uniform Trust Code
§55-541.01 *et seq*
- Powers of Trustee
§55-548.15,.16

ELEMENTS OF TRUSTS

- Declaration or Agreement
- Settlor or Grantor(s)
- Trustee(s) & Beneficiary(ies)
- Assets (realty, personalty, etc.)

UNIQUE ELEMENTS OF SPECIAL NEEDS TRUSTS

- Discretionary standard for distributions
- Disabled beneficiary

ADVANTAGES OF SNTs

- Trustee has broad discretion regarding distributions.
- Family members and friends can fund them.
- Disabled person benefits from improved quality of life.

TYPES OF SPECIAL NEEDS TRUSTS

- Self-Settled
- Pooled
- Third Party

SELF-SETTLED SNTs

- Federal Statutory Authority
42 U.S.C. §1396p(d)(4)(A)
- Commonly known as
(d)(4)(A) SNTs

SELF-SETTLED SNTs

- Created by parent, grandparent,
Guardian or Court
- Disabled person's assets fund
SNT for his or her benefit.

SELF-SETTLED SNTs

- Disabled person must be under
age 65 when SNT is created/funded.
- There are payback requirements
upon disabled beneficiary's death.

SELF-SETTLED SNTs

- Must be *inter vivos*
- Must be irrevocable

POOLED SNTs

- Federal Statutory Authority
42 U.S.C. §1396p(d)(4)(C)
- Commonly known as
(d)(4)(C) SNTs

POOLED SNTs

- ARC of Northern
Virginia
- Commonwealth
Community Trust

POOLED SNTs

- Can be established by
disabled beneficiary
- Upon beneficiary's death,
Pooled Trust keeps assets.

THIRD PARTY SNTs

- No Federal Statutory Authority
- Governed by State Law

THIRD PARTY SNTs

- Typically created by parent, sibling, or child of disabled person.
- Third party's assets fund SNT for benefit of disabled person.

THIRD PARTY SNTs

- Disabled person may be over age 65 when SNT is created/funded.
- There are no payback requirements upon disabled beneficiary's death.

THIRD PARTY SNTs

- Can be *inter vivos* or testamentary
- Can be revocable or irrevocable

SPECIAL NEEDS TRUSTS

THE LETTER OF INTENT

FUNDING THE SNT

- Determining the Amount
- Threshold Question
- Options and Considerations

FUNDING THE SNT

- Lifetime Income
- Second-to-die LI Policy
- IRA or Other Retirement Plan
- Family and Friends

ADMINISTERING THE SNT

- Trust assets are used to supplement, not replace, public benefits.*
- Trustee has *sole, absolute, and unfettered* discretion over assets.*

*If SNT is properly drafted

ADMINISTERING THE SNT

- Beneficiary has no control over assets.*
- Beneficiary has no right to compel distribution.*

*If SNT is properly drafted

ADMINISTERING THE SNT

- Trustee has authority to amend trust to comply with changes in law.*
- Trust provisions protect assets during beneficiary's lifetime.*

*If SNT is properly drafted

TYPICAL PROVISIONS OF SNTs

- Annual Independent Check-ups
- Transportation and Equipment
- Recreation and Entertainment
- Education/Training/Rehabilitation

SPECIAL NEEDS TRUSTS

Thank you for attending!

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