



# Davey Law Group, P.A.

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## FREQUENTLY ASKED QUESTIONS ABOUT SPECIAL NEEDS TRUSTS

### *1. What is a Special Needs Trust?*

A Special Needs Trust (SNT) is an IRREVOCABLE (cannot be changed once signed) trust for the benefit of a person who has been determined to be “disabled” according to the Social Security guidelines. That disabled person is typically receiving government benefits and the receipt of cash would disqualify that person from continuing to receive those government benefits. Those government benefits are usually: Social Security Disability, Supplemental Security Income, Medicare, Medicaid, etc...

#### **Is there more than one type of SNT?**

There are several different types of SNT’s.

1. Disabled person under age 65 (42 U.S.C. 1396p(d)(4)(A)): this trust is established with funds of the disabled person (typically a personal injury settlement/jury verdict) for the benefit of a disabled person who is under age 65 at the time of drafting the SNT. After the death of the beneficiary, then the law requires that any remaining funds are first used to repay any Medicaid lien due for benefits paid during the lifetime of the beneficiary and only if there are any funds remaining, then they can be distributed to the heirs of the beneficiary according to the terms of the Trust.

2. Disabled person over age 65 (42 U.S.C 1396p(d)(4)(C)): this trust is typically called a Pooled Trust and is again established with funds of the disabled person; however, this person is over age 65 at the time of drafting the SNT and, therefore, once the beneficiary passes, then any assets remaining in the Pooled Trust must remain in the Pooled Trust for the benefit of other disabled beneficiaries or must be paid to the Medicaid.

3. Person who receives too much income to be qualified for Medicaid (42 U.S.C. 1396p(d)(4)(B): sometimes called a Miller Trust; and

4. Third Party Special Needs Trust: this trust would be established by someone else (parent, grandparent, etc...) for the benefit of a disabled person. This trust would provide for comfort and happiness for the benefit of the disabled person during their lifetime, but once that disabled person passes away, the Grantor of the trust in establishing the trust, would have made a decision as to where any funds remaining in the Trust would go.

## **2. *How does a SNT work?***

A SNT provides that Trustee of the SNT will pay for expenses for the “comfort and happiness” of the disabled person/beneficiary. This distinction is very important because it means that the trust will not pay for the “support and health” of the beneficiary. Comfort and happiness needs are defined as things that would improve the quality of life of the beneficiary (computer, television, social outings, etc...) and things that are not provided for by the government benefits (vocational rehabilitation, additional training, additional health care items, special dietary needs, etc...). Support and health are usually defined as expenses that would normally be paid by the government programs (rent, utilities, medical care, etc...).

*Can a SNT pay for lottery tickets and diamond jewelry?*

No.

*Can a SNT pay for gifts for me to give to friends and family?*

No. The function of the SNT is to provide for the disabled person. Any money for gifts or other non-qualified expenditures should come from the disabled person’s own funds or from monthly cash benefits paid to the disabled person.

## **3. *Who is the beneficiary of the SNT***

The disabled person (during their lifetime) is the beneficiary of the SNT.

## **4. *Who can establish a SNT?***

By law, the Grantor/Settlor of a SNT can only be one of the following:

1. Parent
2. Grandparent
3. Legal Guardian
4. Court

## **5. *Who would be the Trustee of the SNT?***

The Trustee is chosen by the beneficiary with the guidance of legal counsel drafting the trust. The Trustee must be capable of handling the money, investing the money, preparing the annual tax returns for the trust (Form 1041), paying the taxes incurred by the SNT, and properly distributing funds to the beneficiary. The proper distribution of funds from the Trust is critical because in order to remain eligible for government benefits, the Trustee cannot distribute assets or funds from the Trust in a way that would disqualify the beneficiary. This is one of the most difficult questions posed to the beneficiary in the drafting of the SNT because this person must fill all of the needs set forth above and be someone that the beneficiary can work with for many years in the future.

*Can the Trustee hire a professional (attorney, accountant, financial planner) to assist the Trustee with these duties?*

Absolutely.

## **6. *What happens if the Trustee is no longer willing or able to be Trustee?***

In drafting the document, we will name several successor Trustees to be sure that if something happens to the Trustee, there is someone to take over for the Trustee. Additionally, if none of the named Trustees can act, then we will Petition the Court to have a trustee named.

## **7. *What happens to the money remaining in the trust after the death of the beneficiary?***

That depends on the type of SNT.

a. If the beneficiary was *under 65* when the Trust was drafted, then the law requires that any funds remaining in the SNT after the death of the beneficiary be paid first to the State of Florida, Agency for Health Care Administration to repay any Medicaid lien. Remember, that although you are properly qualified for Medicaid during your lifetime, Medicaid has the right to demand reimbursement from your estate for any funds that they paid for your medical care during your lifetime. Therefore, only if there are any funds remaining in the Trust after Medicaid has been repaid, then those assets would be distributed to your heirs (whomever you decide them to be).

b. If the beneficiary was over 65 when the Trust was drafted, then the law requires that any funds remaining in the SNT after the death of the beneficiary, be retained in the Pooled Trust for the benefit of other disabled beneficiaries or, if there are none, then the funds must be paid to Medicaid.

**8. *What if the law changes on SNT's?***

We will provide in the SNT that if the law ever changes, that we can amend the Trust so that it continues to comply with the applicable state and federal laws governing SNTs.

**9. *What if I get better and do not need to remain on government benefits?***

If there is truly a substantial change in circumstances, we can petition the court to dissolve the SNT. However, this can only be done with a court order and under very specific situations. Remember too, that once the funds are released from the Trust, they are the assets of the disabled person. In order to go back on government benefits, you must be eligible (asset/income based tests) and be qualified by the appropriate government agency.