

Administering a Special Needs Trust: 10 Mistakes to Avoid



Planner/Attorney Name Name
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10 Costly Mistakes to Avoid

When Administering a Special Needs Trust

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1 Confusing the Type of Special Needs Trust Being Administered

There are two basic types of special needs trusts:

1 - Third-party SNT 2 - First-party SNT

Although an SNT trustee has nearly identical duties in administering first-party SNTs and third-party SNTs, certain important distinctions between the two cause problems for a trustee who does not understand which type of SNT is being administered. The two biggest differences between third- and first-party SNT administration involve these issues:

- The first-party SNT must be for the “sole benefit” of the beneficiary, while a third-party SNT need not be.
- The first-party SNT must include a payback to each state Medicaid agency where the beneficiary received benefits, while a third-party SNT has no such requirement.

2 Confusing the Public Benefit Programs

The trustee needs to know what public benefits the SNT beneficiary is receiving because the trustee’s job differs drastically depending on the type of benefits involved.



If the only benefits involved are Social Security Disability Insurance (SSDI), Social Security (SS), and Medicare, which have no resource limits, the administration is much simpler. These programs do not have special rules where SNT disbursements affect ongoing eligibility. Thus, the SNT trustee need follow only the terms of the trust document as to what disbursements are acceptable. If the SNT beneficiary is receiving Supplemental Security Income (SSI) or Medicaid, however, the SNT trustee must follow strict rules during administration. To make matters slightly more difficult, an SNT beneficiary could be receiving SSI, SS, or SSDI, Medicare, and Medicaid. Sometimes it is difficult to determine exactly what benefits are being received. Public benefits recipients, their families, and even some inexperienced attorneys often confuse the types of public benefits.

3 Failing to Keep Current with Changing Laws

Once the trustee has a clear picture of the benefits being received by the beneficiary,

the trustee must develop a system to stay current with any changes in the laws on SNT administration. Public benefit laws change frequently, and application of these laws can be inconsistent. A helpful website is hosted by the Academy of Special Needs Planners (specialneedsanswers.com) that will help a trustee to keep current as laws change.

4 Misunderstanding the ‘Sole Benefit’ Rule

A first-party SNT must be used for the “sole benefit” of the primary beneficiary during his or her lifetime. If a distribution provides some benefit to the beneficiary, it is considered to be for the beneficiary’s sole benefit. The penalty for violating this rule can be loss of some or all SSI and linked Medicaid benefits. If the beneficiary is receiving only Medicaid, the SNT must still be solely for the beneficiary’s benefit. A distribution made as a gift to someone other than the SNT beneficiary or to a charity is not for the sole benefit of the beneficiary, and causes a disruption of benefits. A third-party SNT has no such automatic prohibition. Disbursements to others may be authorized, but only if the trust terms allow it.

5 No SNT Disbursement System

The most common beneficiary complaint about SNT trustees is lack of communication concerning disbursements from the trust. The easiest way to avoid this complaint is to set expectations at the beginning of the administration with a clear procedure on how to request disbursements, what disbursements are appropriate, as well as outlining the procedure and decision-making process for approval of disbursement requests. Setting expectations regarding the when, how, and turnaround time of disbursements is also important. The disbursement procedure should outline whether disbursements can be made only during business hours, on weekdays, or after 24 hours from a written request. It is in the trustee's best interest to clearly communicate these policies to the beneficiary or the beneficiary's legal representative. This will aid in reducing friction during the administration.

6 Improperly Refusing to Make Disbursements

A common misconception of SNTs is that they are too restrictive because they can only pay for a small number of items and services for the beneficiary. The opposite is true. The SNT is designed to enhance the quality of life

of the person with a disability. Thus, it can pay for any item or service that is not otherwise available from other resources. Given the large selection of items and services available, the SNT is really a wonderful tool that greatly improves the overall quality of life of persons with disabilities. Still, the trustee must understand that certain disbursements (and how they are made) can affect public benefits eligibility. The trustee is thus asked to perform a balancing act between making distributions that do not violate the rules of the applicable benefit programs while providing the beneficiary with goods and services that enhance his or her quality of life.

7 Failing to Distribute for Beneficiary's Food or Shelter

Another common misunderstanding is that an SNT trustee can never make distributions for the beneficiary's food or shelter needs. If the SNT beneficiary is an SSI recipient, then payment of food or shelter costs may cause a small reduction in the overall SSI check. This is usually an acceptable loss because the cost of food and shelter is generally much higher than the highest SSI monthly payment. The loss of SSI benefits cannot exceed one-third of the SSI check paid by the federal government. For example, if the SNT beneficiary receives \$733 in monthly federal SSI benefits, and an SNT

trustee pays the beneficiary's landlord \$1,500 a month for rent and pays another \$500 a month for food, then the beneficiary's SSI check would be reduced by around \$265. The SNT beneficiary would still receive around \$470 from SSI plus be allowed to live in a \$1,500-a-month apartment and have \$500 of her food covered. This is one way to greatly enhance an SNT beneficiary's quality of life.

8 Reimbursing with Cash

A common mistake many trustees make is distributing money directly to the SNT beneficiary. Any money the trustee gives to the beneficiary directly is "unearned income" to the beneficiary under the SSI rules. After a set-aside of the first \$20 each month (general income exclusion), these cash payments reduce the SSI recipient's benefits dollar-for-dollar. In other words, the trustee should never distribute cash directly to a beneficiary who is receiving SSI. The correct procedure is to pay vendors directly for goods and services in order to avoid the dollar-for-dollar reduction or to reimburse third parties for expenditures they make on behalf of the beneficiary.

9 Failing to Maintain Excellent Records

All SNT trustees must keep accurate records of each and every SNT transaction. Having complete records is very important when the SNT trustee makes reports to the SNT beneficiary, to a court when required, to the IRS, or to the agencies providing the beneficiary's public benefits. It is prudent for the SNT trustee to use a computer program such as Quicken or QuickBooks to keep track of disbursements. The SNT trustee should keep receipts of all disbursements as well. If the SNT trustee is unable to provide these records, the disbursements will be presumed to have been made inappropriately; as a result, the SNT beneficiary may lose his or her eligibility for SSI and may be charged with an SSI overpayment.

10 Not Following Proper SNT Termination Procedure

When a first-party SNT terminates, the SNT trustee must pay back Medicaid in every state in which the beneficiary received assistance before disbursements can be made to the SNT's remainder beneficiaries. Thus, the SNT trustee has to be very careful about how money in the SNT is spent prior to Medicaid being paid back. If an SNT trustee makes an inappropriate disbursement, he or she may



be personally liable for breach of fiduciary duty. The SSA has strict rules on what can be disbursed from an SNT before Medicaid receives its payback. Only the following administrative expenses may be paid before reimbursement of Medicaid:

- State and federal taxes due from the trust because of the death of the beneficiary or termination of the trust and transfer of trust assets to the remainder beneficiaries
- Reasonable fees for administration of the trust estate, such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust.

The following disbursements are expressly prohibited from being paid before reimbursement of Medicaid:

- Taxes due from the estate of the beneficiary, other than those arising from inclusion of the trust in the estate
- Inheritance taxes due for residual beneficiaries
- Payment of debts owed to third parties
- Funeral expenses

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